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Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

Fourth and fifth periodic reports of States parties due in 2012

Australia*, **

[31 July 2013]

* The third periodic report of Australia is contained in document CAT/C/67/Add.7; it was considered by the Committee at its 812th and 815th meetings, held on 29 and 30 April 2008 (CAT/C/SR.812 and 815). For its consideration, see the Committee's concluding observations (CAT/C/AUS/CO/3).

** The present document is being issued without formal editing.

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*** Annexes to the present document can be consulted in the files of the secretariat.

Abbreviations used

AAT	Administrative Appeals Tribunal
ACT	Australian Capital Territory
AFP	Australian Federal Police
AHRC	Australian Human Rights Commission
COAG	Council of Australian Governments
Cth	Commonwealth of Australia
DIAC	Department of Immigration and Citizenship
ICCPR	International Covenant on Civil and Political Rights
IDC	Immigration Detention Centre
NSW	New South Wales
NT	Northern Territory
Qld	Queensland
SA	South Australia
Tas	Tasmania
UPR	Universal Periodic Review
Vic	Victoria
WA	Western Australia

Introduction

1. The present report constitutes the combined fourth and fifth periodic reports of Australia to the United Nations Committee against Torture on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The third periodic report was submitted to the Committee in 2005 (CAT/C/67/Add.7) and it covered the period July 1997 to October 2004. The report was discussed in the Committee on 29 and 30 April 2008.

3. In accordance with the new reporting guidelines, the Committee has adopted a list of issues (CAT/C/AUS/Q/5) prior to the submission of the fifth periodic report of Australia (CAT/C/AUS/5). The list of issues was adopted by the Committee at its forty-fifth session in November 2010 according to the new optional procedure established by the Committee at its thirty-eighth session (HRI/GEN/2/Rev.6), which consists of the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

4. This report is presented in three parts. Part I provides specific information on the implementation of articles 1 to 16 of the Convention, including measures taken to implement the Committee's previous recommendations and conclusions as referred to in the aforementioned list of issues. Part II gives information on measures Australia has taken to combat terrorism and the interaction of those measures with human rights. Part III gives general information on the national human rights situation, inc'uding new measures and developments relating to implementation of the Convention.

5. The present report was prepared by the Australian Government Attorney-General's Department in consultation with other Commonwealth departments and agencies and State and Territory Governments. The list of issues adopted by the Committee was circulated to civil society, including Australia's national human rights institution – the Australian Human Rights Commission – and respected non-governmental organisations, which were requested to present their views on issues which should be addressed in the report. Furthermore, in October 2012, the Australian public were invited to present their views on the draft report.

I. Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

Reply to the issues raised in paragraph 1 of the list of issues (CAT/C/AUS/Q/5)

6. The rationale behind the structure of sections 274.2 (1) and 274.2 (2) in the Commonwealth Criminal Code inserted by the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010 (Cth) is a matter of drafting clarity. It was necessary to depart from the precise wording of the Convention against Torture in order to create unambiguous offences, while still capturing the full scope of prohibited conduct.

7. In establishing the offences it was clearer to enumerate a list of prohibited purposes and then to treat discrimination separately. In this respect, the structure of sections 274.2 (1) and 274.2 (2) reflects the wording in article 1 of the Convention, which contains one clause relating to conduct "for such purposes as [those prohibited]" and then a separate clause in the same sentence relating to "or for any reason based on discrimination of any kind".

8. Collectively, subsections 274.2 (1) and 274.2 (2) fully implement the obligation in article 4 of the Convention to criminalise acts of torture, as defined in article 1. The creation of a separate provision in relation to discriminatory acts of torture does not imply that such acts are less serious than those committed for the purposes listed in subsection 274.2(1). The maximum penalty of imprisonment for 20 years applies to both subsections.

9. The Government does not intend to review subsection 274.3 (1). The Criminal Code provides for Australia to exercise universal jurisdiction over torture offences: subsection 274.2 (5) provides for jurisdiction over offences wheresoever committed by any person. The requirement for consent to prosecute in subsection 274.3 (1) applies where the conduct constituting the alleged offence occurs wholly in a foreign country. This ensures that the exercise of jurisdiction by Australia in respect of foreign conduct is appropriate, having regard to general principles of international law and comity. Where conduct occurs wholly in a foreign country, that country's laws would ordinarily apply in the first instance and it is more practical for that country's officials to engage in enforcement.

10. When considering whether to give consent to prosecute, the Attorney-General would take into account Australia's international obligations, including the obligation in the Convention to extradite or prosecute alleged perpetrators of torture where present in Australia. Judicial review of the legality of the Attorney-General's decision in relation to consent is available in the federal courts.

11. The extended geographical jurisdiction provided in subsection 274.2 (5) establishes Australia's jurisdiction over acts of torture in all cases in article 5 of the Convention, including when the victim is an Australian national, as previously recommended by the Committee.

12. With respect to the criminalisation of acts covered by article 16 of the Convention, the Government notes that the obligation in article 4 does not extend to such acts. The Government does not intend to enact a specific offence of cruel, inhuman or degrading treatment or punishment in Commonwealth law. Conduct which amounts to such acts is broadly covered by a range of existing Commonwealth, State and Territory legislation (for example laws relating to assault and battery).

Article 2

Reply to the issues raised in paragraph 2 of the list of issues

13. The Government announced Australia's Human Rights Framework (the Framework) in April 2010 following the most extensive consultation on human rights in Australia's history. The Framework reflects the key recommendations made by the National Human Rights Consultation Committee, and covers a range of measures, including human rights education, a new National Action Plan on human rights, and consolidation of federal anti-discrimination Acts.

14. The Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) came into force on 4 January 2012, and is a key part of the Framework. The Act requires that all new Bills and disallowable legislative instruments be accompanied by an assessment of compatibility with human rights and provides for the establishment of a new Commonwealth

Parliamentary Joint Committee dedicated solely to human rights scrutiny. Under the Act, "human rights" is defined as the rights and freedoms recognised or declared by the seven core human rights treaties ratified by Australia, including the Convention against Torture.

15. The Parliamentary Joint Committee on Human Rights was established on 13 March 2012 following a joint resolution by both houses of parliament. The Committee will have functions to examine Bills and disallowable legislative instruments for compatibility with human rights: examine existing Acts for compatibility with human rights; and conduct broader inquiries into any matter relating to human rights that is referred to it by the Attorney-General.

16. The Framework does not provide for a Human Rights Act or Charter of Rights. Australia gives effect to its human rights obligations by ensuring that domestic laws, policies and practices are consistent with them. The Government's preferred approach to increase recognition of human rights includes greater consideration of human rights by the Commonwealth Parliament, and the incorporation of human rights early in the development of laws and policies. The Framework will facilitate a dialogue on human rights between the Executive, the Parliament and the community. The Government intends for this dialogue to promote long-term cultural change across Australia.

17. As part of the measures providing for effective and practical changes to better address protection of human rights, Australia has increased monitoring of compliance with international human rights obligations and implementation of United Nations recommendations domestically by:

- tabling in the Commonwealth Parliament all concluding observations made by United Nations treaty bodies to Australia, as well as recommendations made to Australia in the Universal Periodic Review (UPR);
- committing to establish a systematic process for the regular review of Australia's reservations to international human rights treaties;
- establishing a public online database of recommendations from the United Nations human rights system, including recommendations made by United Nations human rights treaty bodies to Australia, as well as recommendations made to Australia in the UPR; and
- using the recommendations made during the UPR and accepted by Australia to inform the development of Australia's new National Human Rights Action Plan.

Reply to the issues raised in paragraph 3 of the list of issues

18. Australia has a range of legislative measures in place that protect the rights of Indigenous Australians, including Commonwealth, State and Territory legislation such as the Racial Discrimination Act 1975 (Cth) and criminal laws providing protection from torture or other mistreatment.

19. The Australian Government sees the recognition of Aboriginal and Torres Strait Islander peoples in Australia's Constitution as an important step towards building a nation based on strong relationships and mutual respect.

20. In December 2010, the Government appointed an Expert Panel to consider, consult and advise the Government on possible options for recognising Indigenous Australians in the Australian Constitution.

21. The Expert Panel comprised Indigenous and non-Indigenous Australians, including community leaders, constitutional law experts and parliamentary members. The Panel worked closely with organisations that have expertise and a history of engagement on this

issue, including the Australian Human Rights Commission, the National Congress of Australia's First Peoples, and Reconciliation Australia.

22. The Expert Panel reported its findings to the Government in January 2012, and now, for the first time, Australia has a number of options about how to recognise Aboriginal and Torres Strait Islander peoples in the Constitution.

23. The Government believes that, consistent with the recommendations of the Expert Panel, constitutional change should recognise the unique history and culture of Aboriginal and Torres Strait Islander peoples, reflect the nation's fundamental belief in the importance of equality and non-discrimination by removing references to race, and acknowledge that additional effort is needed to help close the gap in Aboriginal and Torres Strait Islander peoples' disadvantage.

24. Successful constitutional change will not occur without the support of the majority of Australians. More time is needed to build the necessary support for a successful referendum. The next important step is to build public awareness and community support for constitutional change. In February 2012, the Government announced $10 million in funding to help build public awareness and community support for the recognition of the First Australians in our Constitution. This important work is being led by Reconciliation Australia, supported by a reference group of business and community leaders.

25. On 28 November 2012, the Government introduced into Parliament a Bill for an Act of Recognition acknowledging the unique and special place of our First Peoples. The introduction of the Act of Recognition is an important step towards achieving constitutional change to recognise Aboriginal and Torres Strait Islander peoples. The Bill includes a statement of recognition of the unique and special place of Aboriginal and Torres Strait Islander peoples that largely reflects the wording suggested by the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples.

26. The Bill contains a sunset date of two years. This will allow the campaign to continue to build momentum and will provide an impetus for a future parliament to reassess how the campaign for change is travelling and timing for a successful referendum. A review will be carried out to consider levels of community support for amending the Constitution and proposals for constitutional change taking into account the important work that has been done by the Expert Panel. The review will conclude six months before the sunset date and be tabled in Parliament.

Reply to the issues raised in paragraph 4 of the list of issues

27. Australia has taken measures under Australia's Human Rights Framework to further enhance the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The Government expects public sector officials to act consistently with international treaties to which Australia is a party, including the Convention against Torture. Under the Framework, the Government has invested in an education and training program for the Commonwealth public sector, including development of a human rights toolkit and guidance materials for public sector policy development and implementation of Government programs. Furthermore, as noted in the reply to paragraph 2 of the list of issues, since January 2012, all new Bills and disallowable legislative instruments must be accompanied by a statement of compatibility with human rights-including rights established in the Convention against Torture.

28. Australia signed the Optional Protocol to the Convention against Torture on 19 May 2009, and the Government is currently working towards its ratification. See the reply to paragraph 8 of the list of issues for further information on Australia's progress on ratification of the Optional Protocol.

Reply to the issues raised in paragraph 5 of the list of issues

29. In November 2012, the Government released the exposure draft Human Rights and Anti-Discrimination Bill 2012, a consolidated Commonwealth anti-discrimination law. The Bill included the Convention within the definition of "human rights", which would have given the Australian Human Rights Commission (the Commission) functions in relation to the rights protected by the Convention.

30. The Government sought to genuinely consult the community on the draft legislation, referring it to a Parliamentary Committee for inquiry. The Committee's report on the draft Bill recommended significant policy, definitional and technical amendments which will require deeper consideration in the process of consolidating five bodies of anti-discrimination law into one. The Government is closely examining the Committee's recommendations and considering the evidence and submissions provided to the Committee by all stakeholders before determining how to proceed.

31. The Government believes that the Commission is adequately funded to carry out its functions. See the reply to paragraph 48 of the list of issues for further information on the Commission's funding.

Reply to the issues raised in paragraph 6 of the list of issues

32. The meaning of "terrorist act" in section 100.1 of the Criminal Code is clearly defined. It provides that actions or threats of action must be made with the intention of advancing a political, religious or ideological cause and with the intention of coercing or intimidating an Australian or foreign government or the public. It includes actions or threats of action involving serious harm to people, serious damage to property, endangerment of life, serious risk to the public's health or safety, or seriously interfering with an electronic system including telecommunications, financial and essential government services systems, essential public utilities and transport providers.

33. Advocacy, protest, dissent or industrial action, not intended to cause serious harm, death, endangerment of life, or serious risk to the health or safety of the public, is expressly excluded from being a "terrorist act", ensuring the definition is appropriately targeted to terrorist activity.

34. Australia's key counter-terrorism offences relate to "terrorist acts" and "terrorist organisations". The fault elements of the offences ensure only conduct associated with a terrorist motive is criminalised. Each offence requires proof of a connection between the alleged conduct and a "terrorist act" as defined in section 100.1 or a "terrorist organisation". This ensures the scope of the offences is confined to conduct that is appropriately categorised as terrorist activity.

35. Stringent legislative requirements, extensive safeguards, and oversight and accountability mechanisms apply to the Australian Security and Intelligence Organisation (ASIO). The Australian Security Intelligence Organisation Act 1979 (Cth) (ASIO Act) provides that questioning, and questioning and detention warrants, may only be sought if there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence, and where other methods of collecting that intelligence would be ineffective.

36. Furthermore, there are additional requirements that must be satisfied in the case of a questioning and detention warrants. Such warrants may only authorise the subject to be taken into custody and detained where there are reasonable grounds to believe that the person may fail to appear for questioning, may alert a person involved in a terrorism offence that it is being investigated, or may destroy, damage or alter a record or thing required to be produced under the warrant. While there are some limitations on access to

lawyers and on disclosing certain information, these are not absolute restrictions, and only apply to the extent necessary to protect national security.

37. The only circumstance in which a person may be denied access to their lawyer of choice is if such a direction is made by a Prescribed Authority (an independent person with judicial experience, appointed by the Attorney-General, who presides over the questioning). The Prescribed Authority must be satisfied, on the basis of circumstances relating to that particular lawyer, that access to that lawyer may result in another person involved in a terrorism offence being alerted about the investigation, or that a record or thing that the person may be requested to produce under the warrant may be destroyed, damaged or altered.

38. The ASIO Act expressly provides that the subject of the warrant denied their first lawyer of choice may contact another lawyer; however, the person may also be prevented from contacting that other lawyer under the circumstances outlined above. Section 34ZP provides that, for the avoidance of doubt, a person may be questioned in the absence of a lawyer of choice. However, this provision is merely declaratory, and does not enable a person's reasonable request for access to a lawyer of choice to be denied. As noted above, the questioning process is presided over by a Prescribed Authority, who has authority to direct that questioning not take place until the subject has legal representation. Therefore, while there is scope to deny a person access to a particular lawyer of choice, there are also sufficient safeguards to ensure that a person is not denied access to a lawyer.

39. The human rights implications of the definition of "terrorist act" and the terrorism-specific powers conferred on ASIO were given careful consideration in the design of the amending legislation, and in subsequent reviews of the legislation once enacted. The Government gave close attention to the wide variety of views expressed in stakeholders' submissions, which expressed opinions on the policy merits and legality of the legislation.

Reply to the issues raised in paragraph 7 of the list of issues

40. Australia's national security legislation is regularly reviewed to ensure the laws remain appropriate. On 12 August 2009, the Australian Government released for public consultation a Discussion Paper containing proposed legislative reforms to Australia's national security legislation. The reforms were designed to implement recommendations of several independent and bipartisan parliamentary committee reviews of Australian national security and counter-terrorism legislation, including:

- review of security and counter-terrorism legislation by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) (December 2006);
- review of sedition laws in Australia by the Australian Law Reform Commission (July 2006);
- the inquiry into the proscription of "terrorist organisations" under the Australian Criminal Code by the PJCIS (September 2007); and
- the inquiry into Dr Mohammed Haneef's case by the Hon John Clarke QC (November 2008).

41. Following an extensive public consultation process, the Australian Parliament considered and passed the National Security Legislation Amendment Act 2010 and the Parliamentary Joint Committee on Law Enforcement Act 2010 to implement the reforms. Key amendments in the National Security Legislation Amendment Act:

- clarified the operation of the treason and sedition offences in the Criminal Code;
- clarified law enforcement powers to investigate terrorism under the Crimes Act 1914 (Cth); and

- extended the role of the Inspector-General of Intelligence and Security to inquire into an intelligence or security matter relating to any Commonwealth Department or agency.

42. On 6 August 2012, the Council of Australian Governments (COAG) commenced an independent review of counter-terrorism legislation in Australia. The review is evaluating the operation, effectiveness and implications of key Commonwealth, state and territory counter-terrorism laws. These include laws relating to preventative detention, control orders, terrorist offences and certain police powers. The review is being conducted by an experienced committee, chaired by the Hon Anthony Whealy QC (a retired judge of the New South Wales Court of Appeal). The committee members have a broad range of experience, with expertise in accountability, law enforcement and prosecution. The review is required to report within six months of commencement. It is expected that COAG will release a public version of the report.

43. The PJCIS will review the ASIO questioning and detention powers before they are due to sunset in 2016. The PJCIS is to review the operation, effectiveness and implications of these powers and report to each House of the Australian Parliament and the Attorney-General, as the responsible Minister. In addition, in July 2012, the PJCIS commenced a review into a range of national security legislation matters which were referred to it by the Attorney-General on 30 April 2012. The referral seeks to ensure that the statutory powers afforded to Australia's security intelligence and law enforcement agencies remain effective in the current and future national security environment. These powers would be accompanied by appropriate accountability and oversight mechanisms to safeguard important civil liberties, such as the right to privacy. The measures relate to reform of the Telecommunications (Interception and Access) Act 1979, the Telecommunications Act 1997, the Australian Security Intelligence Organisation Act 1979 and the Intelligence Services Act 2001.

44. On 21 April 2011, Mr Bret Walker SC was appointed as Australia's first Independent National Security Legislation Monitor under the Independent National Security Legislation Monitor Act 2010. The Monitor is required to review the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation on an annual basis to ensure the legislation is operating effectively and appropriately. The Monitor is also required to take into account international human rights obligations when reviewing the legislation, and consider whether the legislation contains appropriate safeguards for protecting the rights of individuals and that they remain proportionate and necessary. The Monitor is required to provide annual reports to the Prime Minister, who must cause them to be tabled in the Australian Parliament. The Monitor must also report on matters referred to them by the Prime Minister, and has the power to commence own-motion inquiries into the legislation within their remit. The Monitor provided their first annual report to the Prime Minister on 16 December 2011, which was tabled in Parliament on 19 March 2012. The report did not make findings or recommendations, but identified a program of work for future reporting periods.

45. The Australian Federal Police (AFP) has primary responsibility for investigating Commonwealth offences, although State and Territory Police may also investigate and/or assist the AFP. Under s.23C (2) of the Crimes Act 1914 (Cth) a person may, while arrested for a Commonwealth (non-terrorism) offence, be detained for the purpose of investigating whether the person has committed the offence. Section 23DB (2) of the Crimes Act 1914 (Cth) makes similar provision in respect of arrest on suspicion of a terrorism offence. Part IC of the Crimes Act 1914 (Cth) contains a framework of significant safeguards. For example, before a person can be questioned that person has a right to communicate with a lawyer and have the lawyer present during questioning. The person also has a right to inform a relative or friend of his or her whereabouts. If the person has difficulties with

English, an interpreter must be provided. If the person is an Aboriginal person or Torres Strait Islander, special representatives, which can include the person's lawyer, relative, or a representative of an Aboriginal legal aid organisation, must be present during the questioning. If the person is under 18, the person's lawyer, parent, guardian or relative must be present during the questioning. If the person is not an Australian citizen, he or she has must be given the opportunity to communicate with the consular office of his or her country.

46. There is no specific legislative provision for a person to have access to an independent doctor. However, section 23Q of the Crimes Act 1914 (Cth) requires that a person who is arrested must be treated with humanity and with respect for human dignity and must not be subjected to cruel, inhuman or degrading treatment. This would require the person to receive appropriate medical treatment.

47. The AFP has National Guidelines which deal with the procedures or requirements for managing people in AFP custody, and the treatment of people in custody (including medical treatment and access to medical services).

Reply to the issues raised in paragraph 8 of the list of issues

48. The table at Annexure A outlines steps Australia has taken to ensure, in law and in practice, independent monitoring and inspection of places where persons are deprived of their liberty.

49. On 28 February 2012, in accordance with Australia's domestic arrangements, the Government tabled a National Interest Analysis (NIA) with the national Parliament, proposing Australia ratify the Optional Protocol to the Convention against Torture.

50. The NIA proposes, in accordance with consultations with States and Territories, that a number of bodies at both the national and State and Territory level carry out the role of the National Preventive Mechanism. The NIA notes the Government's intention to make a declaration upon ratification, under article 24 of the OPCAT, to postpone the implementation of obligations relating to a National Preventive Mechanism. The Government intends to delay these obligations due to the significant planning and consultation that must take place in order to develop a rigorous and robust National Preventive Mechanism.

51. The House of Representatives' Joint Standing Committee on Treaties reported on the OPCAT in June 2012 and recommended that binding treaty action be taken. The Joint Standing Committee on Treaties commented on the Government's intention to postpone the implementation of obligations relating to a National Preventive Mechanism. The Committee recommended that the Government work with the States and Territories to implement a National Preventive Mechanism as quickly as possible, on ratification of the OPCAT, and the exercise of article 24. The Government's response to the report, tabled on 1 November 2012, outlines the Government's agreement with this recommendation, and its intention to develop a National Preventive Mechanism as soon as possible following ratification.

52. It is Australia's practice not to ratify a treaty until domestic law and policy ensures compliance with its obligations. A working group of officials from all jurisdictions has been formed to carry forward implementation arrangements. The Australian Government and State and Territory Governments are currently working together to prepare legislation that would facilitate compliance with the Optional Protocol by enabling monitoring visits by the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to be undertaken.

Reply to the issues raised in paragraph 9 of the list of issues

53. Overcrowding and pre-trial delays are problems for many jurisdictions, including Australia. The Australian Government supports the States and Territories undertaking initiatives to improve efficiencies in their criminal justice systems and to implement diversion strategies to reduce the number of people in, and the duration of, pre-trial detention.

54. Part IC Division 2 of the Crimes Act 1914 (Cth) prescribes a maximum period of four hours that a person can be detained for the purposes of investigating a Commonwealth offence before the person must be released, or brought before a judicial officer. A judicial officer can extend the investigation period by a maximum of 20 hours for a terrorism offence, or by a maximum of eight hours for a serious offence. In addition, the relevant State and Territory bail laws, subject to some specific provisions in the Crimes Act 1914 (Cth), govern the granting and conditions of bail to Commonwealth offenders.

55. A person who is charged with an offence and detained in custody prior to trial may be granted bail by either the police or a court. Bail is generally refused for serious offences, in circumstances where the person poses a risk to the community, or is a flight risk. If bail is refused, a person may be held on remand pending trial. Bail decisions are subject to appeal to a higher court. A person who is refused bail should be brought before a court as soon as practicable, taking into account a court's caseload. Failure to do so can be the subject of proceedings to require such action. If a person is remanded in custody prior to conviction and sentencing, the pre-sentence period in custody is a factor that may be taken into account by the court when sentencing.

56. State and Territory legislation does not impose a specific time period before which arrested persons must be brought before a judicial officer. However, laws governing criminal procedure provide safeguards. Legislation in the States and Territories allows police to grant bail for non-serious offences and requires arrested persons to be brought before a court or judicial officer for the determination of bail as soon as reasonably practicable.[1]

57. In relation to detention for the purposes of questioning, sections 139-141 of the Criminal Investigation Act 2006 (WA) allow police to initially detain an arrested suspect for six hours for the purposes of conducting a search, investigating any offence suspected of being committed by the arrested suspect, interviewing the arrested suspect concerning any offence he or she is suspected of committing, and deciding whether or not to charge the arrested suspect. Upon application of a police officer, a senior officer may grant a further period of detention of up to six hours for the purposes outlined above provided the further period is reasonable having regard to the matters outlined in s 141 of the Act. Following these two six hour periods, further detention is only permissible upon authorisation of a magistrate who may allow additional periods of detention of up to eight hours if satisfied that it is justified.

[1] Sections 17, 20 and 22 Bail Act 1978 (NSW), ss 4 and 12 Bail Act 1977 (Vic), s 7 Bail Act 1980 (Qld), s 5 Bail Act 1982 (WA), s 13 Bail Act 1985 (SA), s 4 Criminal Law (Detention and Interrogation) Act 1995 (Tas), s 17 Bail Act 1992 (ACT), ss 16 and 19 Bail Act 1982 (NT).

58. In Victoria (Vic) and the Australian Capital Territory, public sector officials are required to act consistently with the right to humane treatment when people are deprived of their liberty,[2] and the right to be promptly brought before a court and to be brought to trial without unreasonable delay.[3]

59. Video-recording questioning of subjects for non-serious offences is not mandatory in all jurisdictions. Recording requirements exist in all jurisdictions in relation to more serious offences. The primary means of ensuring that electronic recording takes place is through legislation, which prohibits or restricts the use of admissions that were not electronically recorded as evidence.

60. In New South Wales (NSW), section 281 of the Criminal Procedure Act 1986 (NSW) provides that admissions made by a suspect, in the course of official questioning, are not admissible unless they were electronically recorded. The section applies to all strictly indictable offences, being the most serious type, and to the majority of other indictable offences. Under this section, admissions that were not electronically recorded can be admitted as evidence, but only if there was a reasonable excuse for it not to be recorded. A reasonable excuse can include: mechanical failure; a refusal by the person to have the interview recorded; and the unavailability of recording equipment within a reasonable time.

61. Where a person is in custody for an indictable offence, and police or an investigating official are required to inform them of their rights or certain information, section 464G of the Crimes Act 1958 (Vic) requires the giving of that information and the person's responses to be recorded. Section 464H also makes evidence of a confession or admission inadmissible as evidence against the person in proceedings for an indictable offence, unless it was recorded or the confirmation of it was recorded. However, under section 464H (2), a court may still admit evidence if the person seeking to adduce the evidence satisfies the court on the balance of probabilities that the circumstances are exceptional and justify the reception of the evidence. There is no legislated obligation on law enforcement agencies to video record questioning for summary offences (offences which attract a maximum term of imprisonment of two years or less); however there is nothing preventing it.

62. Similar requirements exist in Queensland,[4] Western Australia,[5] South Australia,[6] Tasmania,[7] the Australian Capital Territory,[8] and the Northern Territory.[9]

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[2] Section 21 Charter of Human Rights and Responsibilities Act 2006 (Vic), s 19 Human Rights Act 2004 (ACT).

[3] Section 21 Charter of Human Rights and Responsibilities Act 2006 (Vic), s 18 Human Rights Act 2004 (ACT).

[4] Where a suspect is to be interviewed for an indictable offence, section 2.14.2 of the Queensland Police Service Operational Procedures Manual requires that the interview is held using electronic recording equipment where practicable.

[5] Under section 118 of the Criminal Investigation Act 2006 (WA), an admission made during the interview in the absence of an audio-visual recording in a serious case will not be admissible as evidence, unless there is reasonable excuse for the failure to record. Although it is not mandatory that all police interviews with a suspect be video recorded, it is WA Police policy that all interviews should be recorded in their entirety where audio-visual facilities are available.

[6] Sections 74D and 74E Summary Offences Act 1953 (SA).

[7] Section 85A Evidence Act 2001 (Tas).

[8] Section 75 Crimes (Forensic Procedures) Act 2000 (ACT).

[9] Section 142 Police Administration Act 1978 (NT) provides, inter alia, that evidence of a confession or admission made to police by a suspect for an offence carrying a maximum penalty in excess of two years is not admissible as part of the prosecution case in proceedings unless it was electronically recorded and the electronic recording is available as evidence.

63. Section 23v of the Crimes Act 1914 (Cth) provides the framework for tape recording of confessions and admissions with respect to Commonwealth crimes.

Reply to the issues raised in paragraph 10 of the list of issues

64. State and Territory Governments have primary responsibility for the provision of health services to people in prison. There are no federal prisons and federal prisoners are housed in State and Territory facilities. States and Territories have procedures in place to ensure that prison inmates are screened by relevant corrective services and health staff to assess their physical, mental and emotional state, and, where necessary, refer prisoners to the appropriate health care authorities for treatment. These procedures are set out in a variety of levels including legislation, guidelines and manuals. This is summarised below.

65. In NSW, the Crimes (Administration of Sentences) Act 1999 (NSW) confers on Justice Health, a NSW statutory health corporation, the statutory function of providing health services to inmates in correctional centres. Inmate patients also have the right to engage/access health services externally from Justice Health at their own expense, and subject to approval. In addition, s.129 of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) establishes that persons arrested and detained by the police for questioning may receive medical attention.

66. In Victoria, paragraph 47 (1) (f) of the Corrections Act 1986 (Vic) provides all Victorian prisoners (including remandees) with a right, with the approval of the principal medical officer, to a private registered medical practitioner, physiotherapist or chiropractor chosen by the prisoner. The costs are required to be met by the prisoner.

67. In Queensland (Qld), section 22 of the Corrective Services Act 2006 (Qld) provides that a prisoner in a corrective services facility may apply to the chief executive for approval to be examined or treated by a doctor or psychologist nominated by the prisoner.

68. In South Australia, health services to prisoners are provided by the South Australian Prisoner Health Services (SAPHS), a unit of South Australia Health. The SAPHS and the Department for Correctional Services (DCS) have entered into a Memorandum of Understanding for the provision of health services to prisoners. DCS has a duty of care to provide prisoners with healthcare that is equivalent to what is available outside of the correctional system. The SAPS is the frontline response to provide appropriate healthcare in an emergency situation on an ongoing basis, as well as provide guidance on wellbeing programs for a preventative approach and an overall wellness model of health. In certain circumstances, such as for court proceedings or criminal compensation claims, private practitioners may be granted permission to assess prisoners. Costs for this would be the responsibility of the prisoner and health treatment would continue to remain the responsibility of South Australian Prison Health Service staff.

69. Pursuant to a common law duty of care, persons detained in Western Australia (WA) Police lockups are effectively afforded access to an independent doctor. The Western Australia Department of Corrective Services Health Services Directorate provides health care under sections 95A and 95B of the Prisons Act 1981 (WA). The Health Services Directorate is a nationally accredited health care provider with the Australian Council of Healthcare Standards.

70. In Tasmania (Tas), section 29 of the Corrections Act 1997 (Tas) provides that every prisoner and detainee has the following rights:

- to have access to reasonable medical care and treatment necessary for the preservation of health;

- if intellectually disabled or mentally ill, the right to have reasonable access within the prison or, with the Director's approval, outside the prison, to such special care and treatment as a medical officer considers necessary or desirable in the circumstances; and
- the right to have access to reasonable dental treatment necessary for the preservation of dental health.

71. In the Northern Territory (NT), the Police Custody Manual provides that if a person in custody at a police station wants to be examined or treated by their own doctor, the Watchhouse Keeper is to inform the nominated doctor as soon as practicable. The prisoner meets any cost involved. Similarly, section 70 of the Prisons (Correctional Services) Act 1980 (NT) requires the Director of the Correctional facility to provide access to a visiting medical officer for medical consultation and treatment. Prisoners are given a comprehensive initial health assessment on admission and also receive routine medical and nursing care. Prisoners and detainees may access external or independent medical/health services but this is paid for by the prisoner, and is subject to the Director's authorisation (which depends on operational and security requirements).

72. Australian States and Territories deliver corrective services in accordance with the Standard Guidelines for Corrections in Australia, which are consistent with the Standard Minimum Rules for the Treatment of Prisoners, the Council of Europe Prison Rules, and article 10 of the International Covenant on Civil and Political Rights. The Guidelines provide a basic framework for the delivery of health services to people incarcerated in Australian prisons.

Reply to the issues raised in paragraph 11 of the list of issues

73. Australia is a party to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness (the Statelessness Conventions). Australia has implemented its obligations under the Statelessness Conventions through a combination of policy, procedural guidance and citizenship legislation.

74. The Government is strengthening existing practices and the identification and assessment of persons who claim to be stateless. For example, on 1 July 2012, the Australian Government Department of Immigration and Citizenship (DIAC) implemented guidelines for Protection visa decision makers on assessing claims of statelessness. The guidelines support more robust findings on statelessness as they relate to protection claims.

75. Australia recognises that there are difficulties in returning claimed stateless persons who have no lawful right to remain in Australia unless their country of habitual residence or former nationality is willing to accept them. DIAC continues to progress case resolution for those who do not engage Australia's protection obligations, but who have claimed to be stateless. Where a person who has claimed to be stateless does not engage Australia's protection obligations, the Minister for Immigration and Citizenship may consider intervention based on his non-compellable public interest powers.

76. In the period 1 July 2009 to 30 June 2012, a total of 1360 protection visas were granted to persons reporting to be stateless: 19 in 2008-09, 190 in 2009-10, 498 in 2010-11 and 653 in 2011-12.

Reply to the issues raised in paragraph 12 of the list of issues

77. Australia has a comprehensive legislative and policy framework to combat trafficking in all its forms, including for sexual and labour exploitation.

78. Australia has taken a whole of government approach to combating people trafficking since instituting its strategy to eradicate people trafficking in late 2003, including ratifying the United Nations Convention against Transnational Organized Crime in 2004 and the Trafficking in Persons Protocol in 2005. In addition, the Commonwealth Government has committed more than $100 million to support a range of domestic, regional and international anti-trafficking initiatives, including specialist AFP teams to investigate trafficking and slavery offences; a victim support program providing individual case-managed assistance to eligible victims of trafficking; special visa arrangements allowing suspected victims of trafficking to remain in Australia lawfully; specialist immigration officers posted overseas; and regional activities to deter trafficking, train law enforcement officials and assist the victims of trafficking. Individual States and Territories also have relevant legislation that contributes to the effectiveness of the overall response, such as the Criminal Code 1913 (WA) for example.

79. In 2009, in response to a recommendation of the Australian National Audit Office, the Australian Government agreed to undertake more systematic annual reporting of outcomes under its anti-people trafficking strategy. In June 2009, the then Minister for Home Affairs and Justice, the Hon Brendan O'Connor MP, tabled in Parliament the inaugural report of the Anti-People Trafficking Interdepartmental Committee, covering the period from January 2004 to 30 April 2009, with further reports being tabled annually.

80. During November 2011, Australia was pleased to host the United Nations Special Rapporteur on trafficking in persons, especially women and children, Dr Joy Ngozi Ezeilo (Oon), who spent two weeks meeting with Interdepartmental Committee member agencies, non-governmental organisations (NGOs), federal and state politicians and other stakeholders in Canberra, Melbourne and Sydney. Dr Ezeilo's visit coincided with the fourth National Roundtable on People Trafficking, which was convened on 23 November 2011 by the then Minister for Home Affairs and Justice, the Hon Brendan O'Connor MP. Dr Ezeilo presented her report on her visit to the United Nations Human Rights Council in June 2012, in which she recognised Australia as a regional leader in the fight against people trafficking. Dr Ezeilo made 86 recommendations to the Government, the majority of which were either fully or partially accepted. Members of the Anti-People Trafficking Interdepartmental Committee are currently working to implement a number of the Special Rapporteur's recommendations.

81. People trafficking offences were introduced into the Criminal Code in 2005, and include offences of slavery, sexual servitude, deceptive recruitment, trafficking in persons and debt bondage. In November 2011, the Government released an exposure draft of the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill for public consultation. The exposure draft followed two public consultation papers released during November 2010 – one on the criminal justice response to people trafficking and slavery, reparations and vulnerable witness protections, and a second on forced and servile marriage.

82. Following extensive consultation on the exposure draft Bill, it was introduced into the Commonwealth Parliament on 30 May 2012. The Bill was passed and came into force on 8 March 2013.

83. The Bill furthers the Australian Government's commitment to doing all it can to prevent slavery and people trafficking, to equip authorities to investigate and prosecute perpetrators, and to support and protect victims. Through amendments to the slavery and people trafficking offences in Divisions 270 and 271 of the Commonwealth Criminal Code Act 1995, the Bill aims to strengthen and expand the existing legal framework, and ensure Australia further fulfils its international obligations to comprehensively criminalise people trafficking and related crimes.

84. Key measures in the Bill include:

- the introduction of new offences of forced marriage, and harbouring a victim, and standalone offences of forced labour and organ trafficking;
- the expansion of the definition of exploitation to include a range of slavery-like practices;
- the expansion of the existing offences of sexual servitude and deceptive recruiting for sexual services to apply regardless of industry;
- amendments to ensure the slavery offence will apply to conduct which reduces a person to slavery, as well as conduct involving a person who is already a slave;
- amendments to existing definitions to capture more subtle forms of coercion, including psychological oppression and the abuse of power or a person's vulnerability;
- an increase to the penalties applicable to the existing debt bondage offences to ensure they adequately reflect the seriousness of the offence; and
- amendments to the Crimes Act 1914 to improve the availability of reparations to individual victims of Commonwealth offences, including slavery and trafficking.

85. In October 2011, the Australian Government awarded funding to two NGOs, two union bodies, and an industry association to carry out work to combat projects which target labour exploitation. These projects are currently being developed and implemented, and will raise community awareness about exploitation occurring outside the sex industry.

86. The AFP assessed 41 people trafficking matters in 2011-12, taking the total to over 350 since January 2004. Almost 59% of these investigations related to trafficking for sexual exploitation and the remainder to other forms of labour exploitation. Fourteen people have been convicted under the slavery and trafficking offences in the Criminal Code: there have been ten convictions for slavery offences, three of sexual servitude offences, and two for people trafficking. As at 30 June 2012, there were four trafficking-related matters before the courts involving five individuals, two of which were in the appeal phase.

87. In 2011-12, the Support for Trafficked People Program, administered by the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, provided assistance to 77 clients, including nine new clients, all of whom were women. Of the nine new clients, seven were trafficked into the sex industry and two were trafficked into other industries. One of the clients referred to the Support Program was a minor (under the age of 18 years).

88. Under the People Trafficking Visa Framework, DIAC granted 26 Witness Protection (Trafficking) (Permanent) visas in 2011-12 – 16 to suspected victims of people trafficking and 10 to immediate family members. This compares with a total of 42 Witness Protection (Trafficking) (Permanent) visas granted in 2010-11 (28 to suspected victims and 14 to immediate family members). DIAC also granted 12 Bridging F visas in the reporting period (24 in 2010-11) and 17 Criminal Justice Stay visas (29 in 2010-11).

89. Australia continues to take an active role in regional and international efforts to combat people trafficking, including the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime and the Conference of Parties to the United Nations Convention against Transnational Organized Crime.

90. The Australian Government worked with international partners on a wide range of activities aimed at building regional capacity and reducing opportunities for people traffickers to operate in the region. In 2011-12, Australia provided $4.8 billion worth of official development assistance to help reduce poverty and promote sustainable

development, which will help to reduce the number of people vulnerable to traffickers. The aid program also addresses violence against women and children.

Reply to the issues raised in paragraph 13 of the list of issues

91. As a matter of international law, domestic violence does not fall within the scope of the Convention under articles 2 and 16, as it is not conduct that is committed by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. However, the reply to paragraph 13 of the list of issues is nevertheless provided in the spirit of cooperation with the Committee, and in recognition of the fact that Australia considers that the issue of domestic violence is a matter of great seriousness.

92. Australia takes a range of extensive measures to combat domestic violence and does not condone or support in any way such violence. Australia is working to help prevent violence against all women including Aboriginal and Torres Strait Islander women, rural women, women with disability, women identifying as lesbian, bisexual, transgender or intersex, and women from culturally and linguistically diverse backgrounds.

93. The Family Violence Prevention Legal Services (FVPLS) Program provides culturally sensitive assistance to Indigenous victims or survivors of family violence and sexual assault through the provision of legal assistance, court support, casework and counselling, as well as information and referral to other services. FVPLS services are provided regardless of gender, sexual preference, family relationship, location, disability, literacy or language. Fourteen organisations are currently funded to deliver services through 31 regions. Services are delivered in rural and remote locations across Australia, reflecting the high incidence of family violence in these locations and in acknowledgement of the fact that fewer service options exist in these communities.

94. The Government also provides funding to Women's Legal Services and Indigenous Women's Programs operating through the Commonwealth Community Legal Services Program for family violence related matters. Under the Community Legal Services Program, the Indigenous Women's Program provides specialist services to address the particular needs of Indigenous women.

In South Australia, collaborative work is underway to develop a Disability Justice Plan, in response to Recommendation 19 of the "Strong Voices: A Blueprint to Enhance Life and Claim the Rights of People With Disability in South Australia (2012-2020)" report. The Plan will address the needs of people with disability at risk including victims, witnesses, those accused of a crime and those convicted. The vulnerabilities of women and children with a disability are a strong focus of the Plan.

95. Rape, including spousal rape and sexual assault, is a criminal offence in all States and Territories in Australia. Legislation in force in all States and Territories empowers courts to make apprehended violence orders to protect victims of domestic violence, or persons at risk of domestic violence.

96. A range of other measures have been implemented to address particular issues. For example, the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth) (the Family Violence Act) was passed by the Australian Parliament on 24 November 2011. The family violence measures in the Family Violence Act commenced on 7 June 2012 and apply prospectively. The Family Violence Act responds to three key reports and other recent research reports on family violence, shared care and infant development, which indicate that more needs to be done to help protect and support families within the family law system who have experienced or are at risk of violence. The Family Violence Act also takes account of recommendations in relation to the definition of

"family violence" from a joint report by the Australian and New South Wales Law Reform Commissions, "Family Violence – A National Legal Response".

97. The Family Violence Act amends the Family Law Act 1975 to help families and family law professionals to understand, disclose and act on family violence and child abuse by:

- prioritising the safety of children in family law proceedings;
- amending the definitions of "abuse" and "family violence" to better capture harmful behaviour (including examples which reflect a more contemporary understanding of the types of conduct that are unacceptable including physical assault, emotional manipulation, economic abuse, and threatening behaviour);
- strengthening the obligations of lawyers, family dispute resolution practitioners, family consultants and family counsellors to prioritise the safety of children;
- enabling better evidence of child abuse and family violence to come before the courts; and
- making it easier for state and territory child protection authorities to participate in family law proceedings.

98. The Family Violence Act continues to promote a child's right to a meaningful relationship with both parents, but places a focus on the protection and safety of children.

99. In Victoria, the Family Violence Protection Act 2008 (Vic) enhances the capacity of law enforcement agencies and judicial authorities to deal with family violence. In particular, the Family Violence Protection Act 2008 (Vic) broadened the definitions of "family violence" and "family member"; provides a court-based system of intervention orders, interim intervention orders and warrants; allows police to apply to the court via telephone or fax for an interim order or for a warrant to arrest the respondent after hours; enables police to issue on-the-spot family violence safety notices outside of court hours to ensure that immediate protection is available when police respond to an incident; prohibits a respondent directly cross-examining a protected witness such as the victim and children; and enables victims to give evidence with alternative measures such as through the use of closed circuit television or screens.

100. The National Plan to Reduce Violence against Women and their Children 2010-22 (the National Plan) coordinates a national violence prevention agenda across all States and Territories and across both the public and private sectors. The National Plan focuses on preventing violence by raising awareness and building respectful relationships. The aim is to bring attitudinal and behavioural change at the cultural, institutional and individual levels, with a particular focus on young people.

101. South Australia's whole of government effort to reduce and prevent violence against women has been driven through the Women's Safety Strategy since 2005. This strategy was updated in 2011 in line with the abovementioned National Plan. The next phase of the Women's Safety Strategy, A Right to Safety 2011-22, focuses efforts on ending violence against women before it begins through a range of primary prevention activities. Through this strategy, significant reforms have been achieved including early intervention and community awareness initiatives and law reform, such as the Intervention Order (Prevention of Abuse) Act 2009.

102. Women fleeing domestic violence and their children are further supported through measures such as the National Partnership Agreement on Homelessness which is investing $1.1 billion to reduce homelessness across Australia. Domestic and family violence continues to be a major driver of homelessness among women and their children, with

escaping violence being the most common reason provided by people who seek help from specialist homelessness services.

103. The Australian Government and States and Territories are supporting a number of initiatives that are based on the "safe at home" model, which seeks to assist women to remain safely in their family home, where it is safe to do so, by removing the perpetrator. The success of this model is based on joint action from courthouses, local police and domestic violence services to assess the risk of staying at home and work at removing the perpetrator from the family home.

104. A national telephone and online crisis and counselling service for people at risk of and survivors of sexual assault, family and domestic violence (1800 RESPECT – 1800 737 732) commenced operations on 1 October 2010. The service is accessible in all urban, regional, rural and remote areas. In addition to assisting survivors of violence and their supporters, 1800 RESPECT provides professional supervision and advice to staff in isolated services and remote areas.

105. In Australia, "1800" telephone numbers are not charged when the call is made from a landline telephone. However, 1800 calls from mobile telephones may be charged depending on the mobile service provider. The Government is proposing amendments to the Australian Numbering Plan that will make calls to 1800 RESPECT and other 1800 numbers free to call from mobile telephones. These amendments will have full effect from 2015, ensuring that people in rural and regional communities – where a mobile telephone is often the only communication option – have equitable access to important telephone services.

106. The Government's Indigenous Family Safety program is aimed at addressing the high rates of Indigenous family violence. The program funds innovative Indigenous family safety community initiatives focused on the Indigenous Family Safety Agenda priority action areas including addressing alcohol abuse, more effective police protection, strengthening of social norms against violence, and coordinating family violence support services. The Victorian Family Violence Prevention Legal Service funded the April 2012 study tour in Australia of the United Nations Special Rapporteur on violence against women.

Reply to the issues raised in paragraph 14 of the list of issues

107. The issues and laws raised by the Special Rapporteur are only part of the range of policies and laws that impact, or potentially impact on, persons experiencing poverty and homelessness. The Government is addressing the issue through a federal Minister directly responsible for homelessness. The Government has committed to introducing new legislation to ensure people who are homeless receive quality services and adequate support, and provided almost $5 billion in new funding to tackle homelessness since 2008. The Government is supported with advice by the Prime Minister's Council on Homelessness, an independent body of experts. The Council provides independent strategic advice in implementing the Government's 2008 White Paper on Homelessness, "The Road Home". The White Paper recognises that the causes of homelessness are many and varied. Domestic violence, a shortage of affordable housing, unemployment, mental illness, family breakdown, and drug and alcohol abuse all contribute. The White Paper sets an ambitious target to halve homelessness by 2020 and offer supported accommodation to all rough sleepers who need it.

108. This White Paper addresses the causes of homelessness and provides a framework for preventing homelessness from occurring in the first place. Among other strategies, it set out increases in support for victims of domestic violence to stay safely in their own home; increases in public and community housing for people at risk of homelessness; improved

tenancy advice and support services; and introduces a policy of "no exits into homelessness" from hospitals, mental health and drug and alcohol services and statutory care.

109. Significant in-roads are also being made through the Government's $5.6 billion Social Housing Initiative. This Initiative will see more than 19,300 new social housing dwellings built with the assistance of the not-for-profit sector. Governments have agreed that at least half of these will go to people who are homeless or at risk of homelessness. In addition, around 80,000 existing dwellings are benefiting from repairs and maintenance, of which 12,000 would have been uninhabitable. This investment in housing is a keystone in the Government's commitment to the progressive realisation of the right of all Australians to access adequate housing.

110. The Government is also working with state and territory governments, people experiencing or at risk of homelessness and the organisations that deliver services to them to develop a National Quality Framework to achieve better outcomes for people who are homeless or at risk of homelessness by improving the quality and integration of services they receive. The National Quality Framework will also include nationally consistent mechanisms to help people experiencing homelessness to register official complaints about service delivery.

111. The Stronger Futures in the Northern Territory strategy is the Australian Government's 10 year commitment to support Aboriginal people in the Northern Territory to live strong, independent lives, where communities, families and children are safe and healthy. Stronger Futures includes a long term investment by the Australian Government of $3.4 billion over 10 years in Aboriginal people in the Northern Territory where many Aboriginal people continue to experience high levels of disadvantage. This funding is in addition to the substantial support it is already providing to improve the lives of Aboriginal people. The Stronger Futures in the Northern Territory package includes measures to tackle alcohol misuse and funding for 60 additional police and 200 additional teachers in remote communities.

Article 3

Reply to the issues raised in paragraph 15 of the list of issues

112. The Migration Amendment (Complementary Protection) Act 2011 amended the Migration Act 1958 (Cth) (Migration Act) with effect from 24 March 2012.

113. As a result, the assessment of complementary protection claims has been incorporated into the existing primary protection assessment framework. This means that assessments for protection will be considered against the Convention relating to the Status of Refugees as well as against complementary protection criteria as part of one integrated process. This creates a legislative framework for the consideration of claims raising Australia's non-refoulement obligations, such that consideration of those claims will no longer rely on the Minister's discretionary powers.

114. The integration of complementary protection into the primary protection assessment process reflects the Government's longstanding commitment to protecting those at risk of the most serious forms of human rights abuses. Australia will not return a person where the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm.

115. Applicants (and members of the same family unit in the same application) who are found to meet the complementary protection criteria and other relevant requirements will receive the same visa as a person who is owed protection under the Convention relating to the Status of Refugees. The Government worked closely with the external stakeholders through the Onshore Protection Consultative Group (whose membership includes the Australian Human Rights Commission) during the development and implementation of the complementary protection criteria into the existing primary protection assessment framework. The consultation with the Onshore Protection Consultative Group included the development of information for clients and migration agents and the key components of training required for decision makers and agents.

Reply to the issues raised in paragraph 16 of the list of issues

116. From 24 March 2012, the Government implemented a single statutory protection assessment process for both irregular maritime arrivals who arrive at an excised offshore place and those who arrive in Australia by air. The framework under the single protection assessment process also includes access for asylum seekers to merits review through the Refugee Review Tribunal. Irregular maritime arrivals who arrived at an excised offshore place prior to 24 March 2012 have been transitioned to the single protection assessment process depending on their stage of processing.

117. The Minister for Immigration and Citizenship lifted the suspension of processing visa applications from asylum seekers from Afghanistan on 30 September 2010. All Afghan asylum seekers affected by the suspension were provided with access to an Immigration Advice and Application Assistance Scheme agent and assisted to prepare their statement of claims. All asylum seekers affected by the suspension have had their claims assessed on a case-by-case basis, in line with the Convention relating to the Status of Refugees and with reference to updated country information.

118. The Immigration Advice and Application Assistance Scheme (IAAAS) provides professional assistance, free of charge, to the most vulnerable visa applicants, including Protection Visa applicants, and to irregular maritime arrivals in Australia who claim asylum. The IAAAS helps with the completion and submission of visa applications and claims for protection, liaison with DIAC, and advice on complex immigration matters.

119. Under the National Partnership Agreement on Legal Assistance Services which commenced on 12 July 2010, Commonwealth civil law matter priorities include the provision of assistance for migration matters where assistance is not available from services funded by DIAC. DIAC gives clients in detention information and facilities that enable them to contact State and Territory legal aid commissions or community legal centres. The guidelines and conditions for grants of aid and access to publicly funded legal assistance are determined by the legal aid commissions and community legal centres.

120. Under the single protection assessment process, that was introduced on 24 March 2012, all asylum seekers processed in Australia were subject to the same decision-making, merits review and judicial review processes, regardless of their mode of arrival in Australia.

121. Following the Government's announcement on 13 August 2012 to implement regional processing arrangements, persons who arrived on or after this date are subject to be processed in accordance with the "no advantage" principle, consistent with the recommendations of the Expert Panel on Asylum Seekers. Arrangements are being made for processing in Australia of persons who arrived on or after 13 August 2012, but are not transferred to a regional processing country.

122. In relation to those transferred to a regional processing country, the exact timeframe and precise nature of the processes that will operate in Nauru and Papua New Guinea is the subject of ongoing discussions between Australia and the respective Governments.

123. However, under Memoranda of Understanding with both Nauru and Papua New Guinea, a commitment has been made to:

- make an assessment, or permit an assessment to be made, of whether or not a transferee is covered by the definition of refugee in article 1A of the 1951 Convention relating to the Status of Refugees as amended by its 1967 Protocol; and
- not to send a transferee to another country where there is a real risk that the transferee will be subjected to torture, cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life or the imposition of the death penalty.

124. The Papua New Guinea Memoranda of Understanding is currently under consideration.

125. Both Nauru and Papua New Guinea are parties to the Convention relating to the Status of Refugees in their own right and have both stated that refugee status determination processes will be undertaken under their own domestic legislation. In addition, the process that is currently being developed will include provisions of claims assistance to all asylum seekers taken there, and merits review for those found not to be a refugee at the primary processing stage. Australia is assisting with this development.

Reply to the issues raised in paragraph 17 of the list of issues

126. In the period 1 July 2008 to 30 June 2012, Australia received 42,344 asylum requests.[10]

	2008-09	*2009-10*	*2010-11*	*2011-12 (as at 30 June)*
Asylum requests received	5,762	10,565	11,511	14,415

127. In the same period, Australia's Final Grants totalled 16,973 protection visas:[11]

	2008-09	*2009-10*	*2010-11*	*2011-12 (as at 30 June)*
Non-Irregular Maritime Arrivals	2,171	2,365	2,101	2,272
Irregular Maritime Arrivals	1,209	2,133	2,001	2,721
Total	3,380	4,498	4,102	4,993

128. This data is disaggregated by age, sex, year, citizenship, and arrival status at Annexure B.

129. Prior to the implementation of complementary protection into Australian domestic law on 24 March 2012, in very rare instances, certain irregular maritime arrivals found not to be refugees have been found to engage Australia's non-refoulement obligations under the ICCPR or the Convention against Torture. As these irregular maritime arrivals were found to face a real risk of torture, or other cruel, inhuman, or degrading treatment, or the death penalty if returned to their home country, the Minister intervened under section 195A of the Migration Act to grant them the visa deemed most appropriate to their circumstances.

[10] Extracted from "Asylum Trends – Australia 2011-12", Department of Immigration and Citizenship, published 21 December 2012, URL: http://www.immi.gov.au/media/publications/statistics/asylum/_files/asylum-trends-aus-annual-2011-12.pdf.

[11] Extracted from "Asylum Trends – Australia 2011-12", Department of Immigration and Citizenship, published 21 December 2012, URL: http://www.immi.gov.au/media/publications/statistics/asylum/_files/asylum-trends-aus-annual-2011-12.pdf.

Reply to the issues raised in paragraph 18 of the list of issues

130. Australia does not return people found not to be refugees where this would contravene Australia's obligations under the ICCPR and the CAT.

131. The Government has safeguards in place to ensure that removal to a person's home country will not breach Australia's non-refoulement obligations. A pre-removal clearance is conducted as a final measure prior to removal if the person engages particular risk factors. This process is designed to identify any changes in the person's circumstances or in the country of return that may give rise to protection issues, and is independent of any other processes initiated by the individual. In addition, at any stage a client can submit reasons why they cannot be removed from Australia, which are assessed prior to removal.

132. Australia is aware of a small number of cases in which failed asylum seekers have claimed mistreatment upon return to their receiving country. The Government takes any such allegation of harm very seriously. The Government can and does inquire into such reports when they arise. Prior to removal, each case was thoroughly assessed against Australia's non-refoulement obligations. Australia was satisfied at the time of removal that there were no substantial grounds for believing that, as a necessary and foreseeable consequence of their removal, these persons would be subjected to any type of mistreatment that would engage Australia's non-refoulement obligations.

133. Figures for the number of people who have been referred for "further consideration" against Australia's non-refoulement obligations cannot be provided as this can occur at any one of a number of stages, and may be part of a broader consideration of a person's particular circumstances. Nonetheless, Australia is confident that it has adequate mechanisms to consider a person's claims where they have expressed a fear of mistreatment upon return.

134. Prior to 24 March 2012, for failed asylum seekers onshore, Australia assessed its non-refoulement obligations under the CAT and the ICCPR through the Ministerial intervention process. For failed asylum seekers who were in the Protection Obligation Determination process, an assessment of complementary protection occurred through an International Treaties Obligation Assessment. New complementary protection provisions under the Migration Act 1958 came into effect on 24 March 2012. For further information on these provisions please see the reply to paragraph 15 of the list of issues.

Reply to the issues raised in paragraph 19 of the list of issues

135. During the reporting period, there were two cases in which a diplomatic assurance was sought and received by Australia prior to extradition: one with respect to the death penalty; and one with respect to conditions of imprisonment. There was also a case of voluntary removal where an assurance was obtained in relation to the death penalty. Australia has a bilateral extradition treaty with both of the relevant countries. Those treaties do not make any provision for monitoring of persons following extradition.

136. In the period 1 July 2009 to 30 June 2011, 247 persons were involuntarily removed. Disaggregated information is summarised at Annexure C.

137. Australia is unable to provide a breakdown by "country of return" and provides the citizenship breakdown instead at Annexure D. In most cases, a person being removed will be returned back to their place of citizenship; however, it is possible for a person to be removed to a third country particularly in the case of people with dual citizenship.

Reply to the issues raised in paragraph 20 of the list of issues

138. On 13 May 2011, the Government suspended plans to establish a regional processing centre on Timor Leste. The Government is satisfied that the regional processing arrangements with Nauru and Papua New Guinea have been put in place consistently with its obligations under the Convention and other applicable treaties, including through safeguards for the protection of fundamental human rights.

139. To transfer persons to a regional processing country, the enabling legislation – the Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 (Cth) – required the Minister for Immigration and Citizenship (the Minister) to designate Nauru and PNG as regional processing countries by legislative instrument. In doing so, the Minister had to have regard to whether or not the country has given any assurances to the effect that it will:

- not expel or return a transferee to another country where it is determined that his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion; and
- make an assessment, or permit an assessment to be made, of whether or not a transferee is a refugee.

140. The Governments of Nauru and PNG have provided these assurances to Australia through memoranda of understanding. In addition, they have also provided assurances to not send a transferee to another country where it is determined that there is a real risk that the transferee will be subjected to torture, cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life or the imposition of the death penalty.

141. For further information on processing arrangements in regional processing countries, please see the response to issues raised at paragraph 16.

Reply to the issues raised in paragraph 21 of the list of issues

142. In regards to character decisions, in the period 1 July 2012 to 30 September 2012, there were 42 cancellation and 19 refusal decisions under section 501 of the Migration Act. In the year 2011-12, there were 157 cancellation, 89 refusal and 897 warning decisions under section 501 of the Migration Act.

143. In the year 2009-10, due to character-related decisions, there were 58 cancellations, 156 refusals and 864 warnings under section 501 of the Migration Act. In 2010–11 due to character-related decisions, there were 132 decisions to cancel, and 104 decisions to refuse to grant a visa. Between the period 1 July 2011 and 22 June 2012, there was only one judicial review matter which raised the possibility that Australia was in breach of its non-refoulement obligations or would expose the person to the risk of the death penalty. In that case, those proceedings were an appeal against the Minister for Immigration and Citizenship's decision to personally cancel the client's permanent visa under section 501 of the Migration Act. The client initiated this appeal on the basis that the Minister had made an error of law in their consideration of Australia's non-refoulement obligations. The Minister subsequently won this appeal in the Federal Court in May 2012.

144. Between the period 1 November 2009 and 30 October 2011, there was only one judicial review matter which raised the possibility that Australia was in breach of its non-refoulement obligations or would expose the person to the risk of the death penalty. In that case the client was a male Liberian national who was aged 34 (at 30 October 2011). Those proceedings were an appeal by the Minister for Immigration and Citizenship against a decision of the Administrative Appeals Tribunal (AAT), which had set aside a decision under section 501 to cancel the man's visa. The Minister initiated an appeal against the AAT's decision, on the basis that the AAT had made an error of law in its consideration of

Australia's non-refoulement obligations. However, the Minister subsequently discontinued the appeal and instead made a determination to cancel the person's visa under an alternative provision of the Migration Act (section 501A).

145. As is noted in Ministerial Direction No 55, any use of the discretionary power under section 501 to refuse or cancel a visa does not of itself breach Australia's international obligations as it is not a decision to remove the person from Australia. All cases where it is planned to remove a person from Australia (including people who have previously had a visa cancelled under section 501) are informed by an assessment of Australia's international treaty obligations. When non-refoulement obligations under international treaties are identified, these need to be considered when determining appropriate case management or removal options for the person. A person will not be removed to a place where they face a real risk of harm in breach of Australia's non-refoulement obligations.

Reply to the issues raised in paragraph 22 of the list of issues

146. Where a request for extradition relates to an offence punishable by the death penalty, the person sought for extradition may only be surrendered if the requesting country has given an undertaking that the person will not be tried for the offence; or if the person is tried for the offence, the death penalty will not be imposed on the person; or if the death penalty is imposed on the person, it will not be carried out. This undertaking is a requirement of the Extradition Act 1988 (Cth).

147. Prior to 20 September 2012, pursuant to paragraph 22 (3) (b) of Australia's Extradition Act, a person could only be surrendered if the Attorney-General is satisfied that, on surrender to the requesting country, the person will not be subjected to torture. The Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012, which came into force on 20 September 2012, amended paragraph 22 (3) (b) to more closely align the provision with Australia's non-refoulement obligations under article 3 of the Convention against Torture. Under the revised provision, the Attorney-General may only surrender a person if he or she does not have substantial grounds for believing that, if the person were surrendered to the extradition country, the person would be in danger of being subjected to torture.

148. Extradition matters raising concerns about the possibility of torture following surrender are assessed on the circumstances of the individual case, with a view to determining whether there is a real risk to the person sought of torture or cruel, inhuman or degrading treatment or punishment. In assessing the risk of torture, the Government takes into account all relevant considerations, including the existence in the State of a consistent pattern of gross, flagrant or mass violations of human rights.

149. Australia is fully committed to upholding its non-refoulement obligations under international law. There are processes established within the Australian Government to ensure that Australia's non-refoulement obligations under article 3 of the Convention against Torture are satisfied, as well as Australia's obligations under the ICCPR, in addition to Australia's related obligations under the Second Optional Protocol to the ICCPR. In circumstances where an undertaking has been given, Australia would give careful consideration to the question whether the country providing the undertaking would abide by it.

150. Any concerns about cruel, inhuman or degrading treatment or punishment can be addressed under the Attorney-General's general discretion to refuse extradition under subsection 22 (3) of the Extradition Act.

151. Australia has not refused any extradition requests under paragraph 22 (3) (b) during the reporting period. However, Australia declined to accept one request during the reporting period on the basis that the person sought for extradition would face a real risk of being subjected to cruel, inhuman or degrading treatment or punishment upon surrender.

152. The Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012 (Cth) amended the Mutual Assistance Act1987 (Cth) to provide that the Attorney-General must refuse a request for assistance where there are substantial grounds for believing that, if the request was granted, the person would be in danger of being subjected to torture. This amendment operates in addition to paragraph 8 (2) (e) of the Mutual Assistance Act, which contains a discretionary ground for refusing assistance if the provision of the assistance would, or would be likely to, prejudice the safety of any person. Requests raising concerns about torture and cruel, inhumane, or degrading treatment or punishment can and would be refused on the basis of this ground for refusal. Additionally, these concerns could also be considered under the Attorney-General's general discretion to refuse a mutual assistance request (paragraph 8 (2) (g)).

Articles 5, 6 and 7

Reply to the issues raised in paragraph 23 of the list of issues

153. Australia has not rejected any such extradition request during the reporting period.

Reply to the issues raised in paragraph 24 of the list of issues

154. Australia has not exercised its universal jurisdiction during the reporting period for acts of torture.

Article 10

Reply to the issues raised in paragraph 25 of the list of issues

155. Under Australia's Human Rights Framework, the Government has allocated funding for the development and delivery of human rights awareness and education programs across the community, including primary and secondary schools, by the Australian Human Rights Commission and NGOs. The Government is also investing in an education and training program for the Commonwealth public sector, including development of a human rights toolkit and guidance materials for public sector policy development and implementation of Government programs. These measures reflect the National Human Rights Consultation Committee's recommendation that education be the highest priority for improving and promoting human rights in Australia.

156. Torture has never been tolerated in Australia. The death penalty has not been imposed by any Australian jurisdiction since 1967. The Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010 (Cth) ensures that the death penalty can never be reintroduced by a State or Territory. States and Territories and relevant Commonwealth agencies, including the Australian Federal Police and the Department of Defence, were closely consulted in the development of this legislation, ensuring its widespread awareness.

157. Staff and Service Provider personnel who work in immigration detention facilities are made aware that torture is a crime at both the domestic and international level. Relevant personnel complete training which informs them of relevant international human rights obligations including non-refoulement obligations. The personnel training teaches that: torture is strictly condemned; treatment in detention must meet human rights standards

contained in relevant international instruments; detainees must be treated with respect and humanity and not be subjected to cruel, inhuman or degrading treatment or punishment; conditions of detention must not be allowed to become so severe as to constitute such mistreatment; and that treating detainees with humanity and respect for the inherent dignity of the person includes access to medical services, communication services, visitation, appropriate accommodation, recreation and complaints mechanisms.

158. The Australian legal system has a comprehensive and significant focus on ensuring availability and knowledge of new laws so that legal professionals such as the judiciary are well informed and up-to-date. Other public officials, such as the police and corrections officers, are expected to stay abreast of their responsibilities and maintain knowledge integral to their roles. They are supported in this through training and continuing education. For example, a presentation on human rights is provided to all new AFP recruits. The training covers all matters relating to the rights of individuals, highlighting respect and dignity for persons who may be taken into custody. AFP members are also informed of their obligations towards suspects under specific legislation. As an example, all AFP members are required to comply with section 23Q of the Crimes Act 1914 (Cth) which requires that all persons who are under arrest or who are protected suspects must be treated with respect for human dignity, and must not be subject to cruel, inhuman or degrading treatment.

159. Recruit training may also include sessions on cultural awareness, dealing with refugees (including those who have suffered torture and trauma), restorative justice, professional standards briefings, evidence and apprehension procedures and involvement in community events. This training is delivered by both AFP staff and external groups such as NGOs.

Reply to the issues raised in paragraph 26 of the list of issues

160. The Detention Health Services Provider is required to ensure that its staff are appropriately trained in the risks and sensitivities relevant to the delivery of health care to people in detention. It provides its employees with induction and regular ongoing training at detention facilities on a wide range of health service delivery issues, including torture and trauma.

161. Within 72 hours of entering an immigration detention facility, individuals undergo a health induction assessment, which includes screening for signs of torture and trauma. The Service Provider's mental health staff use the Harvard Trauma Questionnaire to identify potential victims of past torture and trauma. If a person is identified as or declares to be a survivor of torture or trauma, they are referred for torture and trauma counselling which is delivered by a specialist.

162. Torture and trauma counselling, funded by the Australian Government, is provided by state and territory Forum of Australian Services for Survivors of Torture and Trauma member organisations on the Australian mainland and the Indian Ocean Territories Health Service on Christmas Island. At the Regional Processing Centres on Manus Island, torture and trauma counselling is currently provided by psychologists and counsellors employed by DIAC's contracted Health Services Provider, International Health and Medical Services Pty Ltd. Simular services have not yet commenced on Manus Island though the contracts have been executed.

Article 11

Reply to the issues raised in paragraph 27 of the list of issues

163. AFP guidelines dealing with custodial facilities ensure that people in custody are adequately protected. AFP personnel have a duty of care for people in their custody, and if there is any doubt about a person's medical condition the appointee is advised to seek medical attention on their behalf. The AFP National Guideline on Persons in Custody and Police Facilities and People in Custody is publically available through the AFP's Information Publication Scheme.

164. The AFP has also developed manuals on the conduct of interviewing suspects. These practical guides include advice on rights and obligations on interviewers and interviewees, ensuring evidentiary reliability, suggested interviewing techniques, and a course on investigative interviewing.

165. AFP recruit training includes a communications module, which covers topics such as cultural awareness, interviewing of suspects, compliance with Part 1C of the Crimes Act, and the legal rights of those in custody including Aboriginal and Torres Strait Islanders, juveniles, and the time frames as dictated by statute. The legal rights of persons in custody are emphasised in relation to the contacting of solicitors, family and/or friends.

166. Under the Detention Services Contract with DIAC, the Immigration Detention Service Provider Serco is required to develop a departmental-approved policy and procedures manual that describes in detail the range of operational policies, procedures and processes necessary and appropriate for the day to day delivery of services to people in immigration detention. All policies and procedures expressly required under the Statement of Work must be consistent with DIAC's policies and instructions. The Statement of Work includes obligations on the Immigration Detention Service Provider to maintain a safe and secure environment in each detention facility. Among other things, the manual addresses screening, use of force, and use of restraint obligations. Service Provider training for staff requires that people in immigration detention must be treated fairly and reasonably in accordance with the law and with Immigration Detention Values. It is expected that the treatment of people in detention must be consistent with the Convention – torture and ill-treatment is not acceptable.

Reply to the issues raised in paragraph 28 of the list of issues

167. The Government remains concerned that in Australia, Indigenous people are more likely to enter the criminal justice system earlier than non-Indigenous people, and are incarcerated at higher rates. States and Territories have developed their own policy strategies to guide their efforts to remove this disparity. For example, the Western Australian Department of Corrective Services provides a range of prevention and diversion programs aimed at reducing rates of Indigenous incarceration for young people and adults, such as Regional Youth Justice Services, Community Supervision Agreements, and the Kalgoorlie/Boulder Community Court Pilot. Australian Government work to address the disproportionate representation of Indigenous people in the criminal justice system is guided by a number of initiatives, some of which are outlined below.

National Indigenous Law and Justice Framework

168. In November 2009, the National Indigenous Law and Justice Framework 2009-15 was endorsed by all Australian governments. The Framework refers to the need to eliminate systemic racism within all Australian justice systems by delivering on Indigenous peoples' justice needs in a fair and equitable manner. It provides a nationally agreed approach to Indigenous law and justice issues. It also aims to reduce the over-representation of

Indigenous people in the criminal justice system by focusing on community safety and reducing rates of alcohol and substance-related crime.

169. The Framework does not prescribe strategies or actions that must be adopted by governments or service providers. Rather, the purpose of the Framework was to seek national agreement on best practice, acknowledging that implementation of specific strategies and actions will depend on the needs of particular locations. It was also designed to create opportunities for partnership and information sharing about initiatives that are having a positive impact. The degree to which these aims have been achieved will be assessed as part of an external review of the Framework which is scheduled for 2013-14.

170. Also, as part of the Framework, evaluations of existing Indigenous justice projects are currently being undertaken. These evaluations will provide a more detailed evidentiary basis for policy development by identifying the best approaches for addressing crime and justice in Indigenous communities. Initial evaluations examine Aboriginal courts and sentencing, offender support/reintegration, diversion programs, and night patrols. Subsequent evaluations will focus on projects targeting alcohol and substance misuse and their effectiveness in reducing Indigenous rates of offending, incarceration and recidivism.

Indigenous Justice Program

171. The Indigenous Justice Program provides grants to fund Indigenous law and justice projects. The Program aims to increase community safety for Indigenous Australians through projects that address Indigenous offending, victimisation and incarceration. The underlying causes of Indigenous offending and recidivism (or reoffending) must be addressed in order to reduce the number of Indigenous Australians in prison or juvenile detention and Indigenous victims of crime. Activities funded under the Program seek to do this by rehabilitating those in prison or juvenile detention, or diverting offenders from further contact with the criminal justice system.

172. The Program's Guidelines are reviewed annually, and no grants will be provided in the 2012–13 year due to the number of multi-year funding agreements already in place. The Government intends to hold a funding round for the 2013-14 year.

Interpreter Services

173. With funding from government, the Northern Territory Aboriginal Interpreter Service (NTAIS) provides free access to interpreters for Northern Territory law, justice and health agencies, and legal assistance service providers. NTAIS interpreters assist court proceedings in the Northern Territory through improving Indigenous peoples' understanding of the processes of the court, the representation provided by their lawyer, and any orders or restrictions, such as bail conditions, that are imposed on the accused by the court. Such understanding reduces the prospect of Indigenous people inadvertently being incarcerated for procedural offences, and increases community understanding of police and court processes.

174. Under the 10-year National Partnership Agreement on Stronger Futures in the Northern Territory, the Government is providing funding to continue support for the Northern Territory Aboriginal Interpreter Service so Aboriginal people can get equitable access to the services they need.

175. The Government also provides funding to the Kimberley Aboriginal Interpreting Service. Together with state and territory governments, the Commonwealth Government is developing the National Indigenous Interpreters Framework which is expected to be finalised in 2013, and is developing a Commonwealth Government protocol for working with Indigenous Interpreters.

Customary law

176. The Government's position in relation to the recognition of Indigenous customary law has been guided by the Australian Law Reform Commission's 1986 report, "The Recognition of Aboriginal Customary Laws". The arguments outlined in that report lead to the conclusion that any recognition of Aboriginal customary laws must occur against the background and within the framework of the general law in Australia. The Government's position is consistent with this conclusion.

Customary law in bail and sentencing

177. Following a July 2006 COAG decision, the Government made legislative amendments to provide that customary law and cultural practice cannot be taken into account to lessen or aggravate the seriousness of a Commonwealth or Northern Territory offence in bail and sentencing decisions. The Government reviewed the provisions in 2009 and decided to monitor the laws for a further 12 months before deciding whether legislative reform was required. In January 2011, the case of *Aboriginal Areas Protection Authority v S & R Building and Construction Pty Ltd* [2011] NTSC 3 demonstrated how the amended provisions might undermine legislation established to protect cultural heritage. In a case relating to the sentence of a construction company that carried out work on an Aboriginal sacred site, the appeal judge accepted an argument that the amended provisions prevented him from taking into account the impact on the traditional owners of the site as a reason for aggravating the seriousness of the criminal behaviour.

178. In June 2012, the Government passed legislation that will allow customary law and cultural practice to be considered in Commonwealth and Northern Territory bail and sentencing decisions for offences involving access, remaining on or damage to cultural heritage sites (including sacred sites), and removal or damage to cultural heritage objects.

Closing the Gap initiative

179. Many of the issues related to Indigenous overrepresentation in the criminal justice system, both as victims and offenders, have their roots in the high level of social and economic disadvantage faced by Indigenous Australians. The Council of Australian Governments (COAG) has agreed to work together towards closing the gap in opportunities and life outcomes between Indigenous and non-Indigenous Australians. There are seven building blocks under the initiative, each containing several national priority areas for action. Under the Safe Communities Building Block, priority areas include reducing offending/recidivism and providing victim support, community policing, alcohol management, and community safety planning. To further consolidate national action in these areas, the Working Group on Indigenous Reform is currently considering whether to adopt justice specific targets.

Justice Reinvestment

180. On 26 November 2012, the Australian Senate referred the topic of Justice Reinvestment in Australia to Parliamentary committee for inquiry and report. The inquiry will focus on the following, amongst other things:

- the over-representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill-health, cognitive disability and hearing loss;
- the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures;

- the benefits of, and challenges to, implementing a justice reinvestment approach in Australia; and
- the scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments.

Reply to the issues raised in paragraph 29 of the list of issues

181. Australian States and Territories have taken a range of measures aimed at reducing overcrowding in prisons and expanding non-custodial options, including greater use of diversionary measures, expanded community detention, and increased focus on reducing recidivism.

182. Western Australian has provided additional prisoner accommodation at two minimum security and pre-release facilities and a Custodial Infrastructure Program to provide additional prisoner beds across the WA prison system. Western Australia has also provided Electronic Monitoring for the supervision and monitoring of offenders subject to a community based disposition or Conditional Bail in the community, where offenders are encouraged to find employment and attend programs designed to reduce re-offending and further involvement within the justice system.

183. South Australia continues to implement an agenda of change for improved service delivery in the adult prison system, firmly based on evidence-based practice aimed to enhance public safety. Important improvements in offender program services, a risk based Community Corrections offender management model, and enhanced offender information services are some of the highlights during the reporting period. Electronic Monitoring for the supervision and monitoring of offenders in the community is a priority of the South Australian correctional system. Additional prisoner accommodation has been commissioned at Port Augusta Prison and Mount Gambier Prison to accommodate the increase in prisoner numbers.

184. The Gaps in Secure Services Project in South Australia is reviewing the needs of people with cognitive disability who are accommodated under custodial supervision orders and in forensic mental health facilities. The project has to date identified a need for early intervention and collaborative work across government.

185. Victoria has: funded construction projects that will boost the number of beds in the Victorian prison system; developed an integrated response to women's offending and re-offending (the Better Pathways Strategy) that aims to reduce recidivism; and funded an additional 150 staff at Community Correctional Services, which supervises adult offenders who are sentenced by the courts to serve community-based orders, or who are conditionally released from prison on parole by the Adult Parole Board. This will increase the capacity to manage a greater number of offenders in the community, and aims to enhance the confidence of the courts to make greater use of community correctional sentencing options.

186. In NSW, the total inmate population fell from 10,129 at 31 October 2010 to 9,772 at 30 October 2011 – a decline of over 3.5%. The NSW Government employs a wide range of other diversionary options to prevent persons from entering police custody and the broader criminal justice system, and a number of strategies with a view to reducing the prison population in the State. For example, Intensive Correction Orders came into force on 1 October 2010, with the passing of the Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010 (NSW) which abolished periodic detention in prison as a sentencing option and replaced it with a system of community based intensive correction orders. Intensive Correction Orders combine community-based sanctions and other intensive supervision practices with a range of rehabilitation programs as an alternative to custodial imprisonment for sentences of up to two years. Following a

suitability assessment, the offender is subject to strict monitoring and appropriate restrictions.

187. In July 2011, the Queensland Government announced its reorganisation program for Queensland's network of high and low security prisons. The reorganisation will involve opening a new correctional facility as a male prison; creation of additional low security places for women; and the decommissioning of the men's component at Numinbah Correctional Centre. The reorganisation will better utilise existing and new prison capacity, whilst retaining a reserve capacity to meet future demand growth; increase in the number of suicide-resistant cells in Queensland's prison system (currently 78% of cells are suicide-resistant, increasing to 92% by 2013); and increase the number of low security places for women.

188. Section 365 of the Police Powers and Responsibilities Act 2000 (Qld) contains the arrest authority for Queensland Police Service officers. There are thirteen criteria, one of which must be present for a person to be arrested. In all other cases alternatives to arrest must be considered.

189. In Western Australia, the principle of arrest as a last resort is incorporated into section 128 of the Criminal Investigation Act 2006 (WA). The Northern Territory implemented the "New Era in Corrections" initiative in 2011/12. This included a number of elements with the specific aim of reducing the Northern Territory's imprisonment and re-offending rate, and to reduce the prison population. The New Era package of reforms included:

- a corrections precinct to be built by 2014 which will be in line with best practice standards;
- two new community based sentencing options: the Community Custody Order, and the Community Based Order, to divert offenders from the prison system into rehabilitation and community work;
- funding for better post-release reintegration and support for prisoners; and
- more rehabilitation options as well as alcohol and other drug treatment facilities.

Reply to the issues raised in paragraph 30 of the list of issues

190. The Commonwealth Government continues to engage with States and Territories to identify and address factors contributing to the over-representation of Aboriginal and Torres Strait Islander people within the criminal justice system. Mandatory sentencing has not been abolished in Western Australia (applied to certain home burglary offences since 1996) or the Northern Territory (applied to certain assault offences committed by adults since 2008). The governments and parliaments in Western Australia and the Northern Territory view this measure as necessary to achieve law and justice outcomes, including the deterrence of very serious harm.

Reply to the issues raised in paragraph 31 of the list of issues

191. The National Justice Mental Health Initiative, which commenced in March 2008, audits policy reports, research papers and recommendations relating to mental illness in the criminal justice system. The Initiative released a document entitled "Diversion and support of offenders with a mental illness: Guidelines for best practice" providing a range of principles which underpin best-practice diversion and support.

192. The NSW Law Reform Commission is currently undertaking a general review of the criminal law and procedure applying to people with cognitive and mental health impairments in NSW. The review will have particular regard to a person's fitness to be tried, the defence of "mental illness", and sentencing.

193. All Queensland prisoners are interviewed on admission by psychologists or correctional counsellors to assess mental illness, self-harm, and risk of suicide. This assessment identifies any appropriate treatment necessary and placement in the centre. If this assessment identifies any self-harm or suicide risk then a risk assessment team reviews the offender in order to provide appropriate management guidance. If necessary, prisoners may also be visited by mental health specialists and managed accordingly.

194. In South Australia, section 19C of the Criminal Law (Sentencing) Act 1988 empowers courts to dismiss charges against defendants, or release defendants found guilty of summary or minor indictable offences without conviction or penalty if they:

- suffer from a mental impairment that explains and extenuates, at least to some extent, their behaviour;
- have completed, or are participating to a satisfactory extent in, an intervention program; and
- recognise that they suffer from a mental impairment and are making conscientious attempts to overcome the related behavioural problems.

195. The power to dismiss under section 15 of this Act is only enlivened if the court takes the view the offence is so trifling that it would be inappropriate to impose a penalty and is not related to mental condition of the defendant.

196. South Australia also has a Treatment Intervention Program – a court program aimed at hearing applicants with summary and minor indictable offences related to illicit drug dependence, mental health problems or both. The Program offers three separate streams:

- co-morbidity (for those defendants with substance use issues and mental health problems);
- a six-month drug court program for those defendants with substance use issues only; and
- a mental health/impairment program for those defendants with mental health problems only.

197. All programs are of six months duration, although there is scope for participation to be extended in order to maximise treatment outcomes.

198. Western Australia has an interdisciplinary co-morbidity service model which provides a "one-stop shop" to ensure that offenders are assessed and treated for both mental health and addiction issues. Teams provide medical and psychosocial intervention to patients with mental health or substance misuse related problems across all state prisons.

199. In Tasmania a Mental Health Diversion List (MHDL) operates in the Magistrates Court. The MHDL is not a separate or distinct court but instead operates as a specialist list and uses the provisions under the Bail Act 1994 (Tas) and the Sentencing Act 1997 (Tas) to divert mentally ill participants away from the regular criminal justice system and into appropriate treatment. The MHDL offers a more therapeutic approach to the criminal justice system for mentally ill defendants, reduces the re-offending rates of participants, and improves coordination between criminal justice agencies and health service providers.

200. In relation to immigration, the Commonwealth Government has implemented mental health policies to identify existing or emerging mental health issues, provide mental health support to people in immigration detention, and minimise self-harm risk. The mental health policies were developed in consultation with DIAC's Health Advisory Group, with reference to the Government's National Mental Health Policy and standards recommended by the Royal Australian College of General Practitioners. A mental health policy for people transferred to Regional Processing Centres on Nauru and Manus Island is being developed. In the meantime, such persons are being offered professional mental health support in line with services provided to people in immigration detention in Australia.

201. All people entering immigration detention undergo mental health screening for signs of mental illness and torture and trauma within 72 hours of their arrival. Subsequent mental state examinations are offered to identify any emerging health concerns that may arise during their time in immigration detention. These occur after seven days in immigration detention, and then at intervals of six, 12 and 18 months, and then three monthly thereafter. Additional assessments will occur when triggered, for example, when concerns are raised about a person's mental health by any party. People in immigration detention facilities also have on-going access to the onsite Mental Health Team and can be referred for more specialised care if required. Onsite mental health services are provided through the Health Services Provider and include mental health nurses, psychologists and psychiatrists who are registered with the appropriate professional organisations and institutions.

202. People transferred to a Regional Processing Centre receive health care from onsite general practitioners, nurses, paramedics, counsellors and psychologists employed by the Health Service Provider. There are also visiting psychiatrists and other specialists, as required.

203. Decisions about the number of medical staff deployed to Christmas Island, including the numbers of mental health staff, are made by the Health Services Provider in consultation with DIAC. At 2 December 2012, there were 74 health professionals (excluding administrative personnel) working on Christmas Island. Although access to local psychiatric services is limited on Christmas Island, DIAC and the Health Services Provider have implemented a regular schedule of visits by psychiatrists to Christmas Island to deliver psychiatric services.

204. People in immigration detention on Christmas Island who require access to psychiatry services that are not available on Christmas Island are transferred to the Australian mainland to access these services, including those who are unable to wait for the next scheduled visit by a psychiatrist. People transferred to Regional Processing Centres who require access to a level of psychiatric services that are not available on Nauru or Manus Island are also transferred to Australia to access these services.

Reply to the issues raised in paragraph 32 of the list of issues

205. Staff who work in immigration detention facilities are provided with training on Australia's international human rights obligations, which provides a framework for the treatment of people in detention. Australia's detention service provider, Serco Australia Pty Ltd, has developed policy and procedure manuals in a range of areas including duty of care, working with minors, interaction with people in detention, and wellbeing of people in detention to ensure the inherent dignity of people in detention. DIAC's emphasis on human rights is reflected in new detention policy and practices. The Government's risk-based detention policies were announced in July 2008. Under these policies, which have been implemented administratively within the framework of existing domestic law, unauthorised arrivals are detained for the purposes of managing health, identity and security risks. In cases where people arrive lawfully in Australia and later become unlawful non-citizens, or

later claim asylum, the presumption is that they remain in the community while their claims are assessed, except where they present unacceptable risks to the community.

206. The Government made a clear commitment that children will not be detained in Immigration Detention Centres (IDCs). In accordance with this commitment, no children are held in IDCs. Where it is considered necessary to detain those under the age of 18, they are placed in the form of accommodation most appropriate to their circumstances. This may be community detention, an alternative place of detention, or an immigration detention facility such as immigration residential housing.

207. On 18 October 2010, the Government announced that it would begin moving significant numbers of children and vulnerable family groups out of immigration detention facilities and into community-based accommodation by expanding the community detention program. A primary objective of the contract between DIAC and the detention service provider is to ensure cooperation that achieves delivery of services in accordance with the Government's risk based detention policies. The fair and reasonable treatment of people in immigration detention is also subject to a range of Commonwealth legislation including the Immigration (Guardianship of Children) Act 1946 (Cth), the Work Health & Safety Act (Commonwealth) 2011, the Australian Human Rights Commission Act 1986 (Cth), and the four national anti-discrimination acts.

208. DIAC's contracted Health Service Provider, currently International Health and Medical Services Pty Ltd, delivers (in detention facilities) or organises (for people in community detention) comprehensive primary health care and mental health services to all clients during their period of immigration detention. The Health Services Provider ensures that the quality and standard of health care provided is broadly commensurate with that generally available to the Australian community and in accordance with the Detention Health Framework. In addition to services provided to people in immigration detention in Australia, International Health and Medical Services Pty Ltd also provides physical and mental health care to people accommodated at Regional Processing Centres.

209. The Health Services Provider provides advice to DIAC on the appropriate level of services and staffing that is required at each immigration detention facility. The Health Services Provider is required to achieve accreditation against the Royal Australian College of General Practitioners Standards for Health Services in Australian Immigration Detention Centres (the Standards). DIAC and the Health Services Provider are currently working together to ensure that these Standards are met for immigration detention facilities. DIAC also relies on its health advisory body for independent, expert advice regarding the provision of health care for people in all forms of immigration detention.

210. Work was completed in 2013 by the Australian Human Rights Commission to develop human rights standards for monitoring immigration detention facilities.

Reply to the issues raised in paragraph 33 of the list of issues

211. The States and Territories retain primary responsibility for provision of health services to prisoners.

212. The Australian Government has approved some access under provisions within the Pharmaceutical Benefits Scheme to the Highly Specialised Drugs Program for prisoners in each State and Territory to provide access to medicines used to treat HIV/AIDS and Hepatitis B and C, in particular.

Reply to the issues raised in paragraph 34 of the list of issues

213. On 18 July 2011, the WA Legislative Council's Standing Committee on Environment and Public Affairs tabled its report on the "Inquiry into the Transportation of Detained Persons". The WA Government response to the report was tabled in the WA Parliament in March 2012. The report contains 20 recommendations, including providing better facilities for the transportation of detainees and the use of video link as an alternative to appear in court in person.

214. Measures have been implemented to prevent any further deaths from occurring in custodial transportation. For example, the WA Department of Corrective Services has replaced the custodial transport fleet with vehicles that are air-conditioned, contain temperature monitoring systems, and are fitted with refrigeration for food and cold water. Coach and air transport alternatives have also been established. The Department has developed a stringent new set of minimum standards, which all secure escort vehicles must meet. The Department has also introduced a clause into the new Court Security and Custodial Services contract requiring all contract workers to be trained to a minimum standard of Certificate III in Custodial Practice, with a minimum level of Certificate IV being required for supervisors. Upgrading of video/audio links facilities in court houses, prisons and police stations throughout the State is subject to government funding.

Articles 12, 13 and 14

Reply to the issues raised in paragraph 35 of the list of issues

215. (a) Each jurisdiction has its own guidelines regarding the use of force by law enforcement agencies that are consistent with the Australia New Zealand Policing Advisory Agency national guidelines for incident management, conflict resolution, and use of force. The guidelines promote police use of the minimum amount of force appropriate for the safe and effective performance of police duties that is proportionate to the level of risk involved.

216. Complaints against law enforcement officials, including complaints about the excessive use of force, are usually made directly to the relevant police force for investigation at first instance. Depending on the allegation and the results of the investigations conducted, sustained findings against law enforcement officials may result in criminal prosecutions or departmental sanctions including dismissal.

217. Complaints against police can be made to the Police Integrity Commission in New South Wales, the Office of Police Integrity in Victoria,[12] the Crime and Misconduct Commission in Queensland, the Corruption and Crime Commission in Western Australia, and the Police Complaints Authority in South Australia. In Tasmania, the Australian Capital Territory and the Northern Territory, complaints against police can be made to the State or Territory's Ombudsman.

218. The Commonwealth Ombudsman is also the Law Enforcement Ombudsman and can investigate complaints about the actions of AFP members and about the policies, practices and procedures of the AFP as an agency. The Commonwealth Ombudsman has responsibility for reporting on the comprehensiveness and adequacy of the AFP's complaint handling. State and Territory Ombudsmen have a similar role with respect to complaints about police in those jurisdictions. Work is currently being undertaken across jurisdictions

[12] The Victorian Government has announced a new anti-corruption body, the Victorian Integrity and Anti-Corruption Commission, will be established to replace the Office of Police Integrity.

to consider options to improve consistency in policy for the deployment of less than lethal use of force options.

219. All levels of Government have taken steps to implement the recommendations made by the Royal Commission into Aboriginal Deaths in Custody regarding improving mechanisms for complaints against police. The NSW Aboriginal Legal Service is currently undertaking an evaluation of the implementation of the Royal Commission's recommendations. The Commonwealth Government will consider its findings and any further action that may need to be taken once the evaluation's findings are released.

220. (b) The Victorian Office of Police Integrity conducted an extensive review of the investigative process following a death associated with police contact in 2011. The Victorian Government is considering its response to the review, which included recommendations to adopt a working definition of "death associated with police contact", and to consult with key stakeholders regarding an optimal legislative framework for the investigation and oversight of deaths associated with police contact in Victoria. Victoria Police has also completed and adopted protocols specific to investigating deaths post police contact. The process was approved after a thorough human rights audit of current process, and a human rights risk assessment, to ensure high level integrity of the process.

Reply to the issues raised in paragraph 36 of the list of issues

221. Between 1 January 2007 and 30 June 2012, the AFP received 327 complaints relating to excessive use of force or assault:

2007	*2008*	*2009*	*2010*	*2011*	*2012*	***Total***
85	68	61	60	24	19	**327**

222. These complaints range from complaint of force used in touching a person with open hands to effect an arrest through to more serious allegations of using issued accoutrements to cause injury. Complaints of torture or ill-treatment, if made, would be contained within the excessive use of force complain statistics.

223. In the same period complaints relating to excessive use of force or assault that have been finalised and found to be established (i.e. proven) complaints are as follows:[13]

2007	*2008*	*2009*	*2010*	*2011*	*2012*	***Total***
0	7	3	0	2	7	**19**

224. Between 1 January 2007 and 30 June 2012, 19 excessive uses of force complaints were established.

225. Nine of the established complaints related to offences committed by one AFP member. This member resigned and was found guilty of nine counts of criminal assault. One member resigned prior to the completion of their investigation. Four complaints related to one AFP member. The member received a formal warning and was reassigned to other duties. Members involved in four of the incidents were counselled and remedial action taken. One member was a secondee to the AFP from another state jurisdiction and completed their secondment prior to the finalisation of the investigation. The relevant State Police Force Commissioner was advised of the outcome. 11 of the established complaints related to inappropriate use of OC spray (pepper spray), and the remaining eight established

[13] Complaints received in a given year may not be finalised in the same year.

complaints related to excessive use of physical force. 18 of the 19 victims were male with ages ranging from 18 to 57. The ethnicity of the complainants is not recorded.

226. Complaints relating to the use of force are thoroughly investigated and adjudicated on a case by case basis. Whilst statistics show few use of force complaints have been established, this does not demonstrate a lack of attention on the part of the AFP to such matters. The AFP continues to scrutinise and improve its practices and procedures supporting incidences of use of force. The Commonwealth Ombudsman also closely monitors complaints relating to use of force, and the AFP is responsive to recommendations by the Ombudsman to improve use of force training and complaints management.

227. Data of this nature in State and Territory jurisdictions is not available in the disaggregated manner requested by the Committee.

228. Between 1 July 2006 and 30 June 2011 the NSW Ombudsman recorded 4,265 complaints alleging the excessive use of force by the NSW Police Force. The number of complaints has been trending downwards over the reporting period:

	2006-07	*2007-08*	*2008-09*	*2009-10*	*2010-11*
Complaints of excessive use of force by the NSW Police Force	1,252	1,115	679	723	596

229. Between 1 July 2008 and 30 June 2011, the Queensland Crime and Misconduct Commission recorded 3,793 complaints alleging assault of the excessive use of force by Queensland Police:

	2008-09	*2009-10*	*2010-11*
Complaints of assault or excessive use of force by Queensland Police	1,189	1,315	1,289

230. Between 1 July 2006 and 30 June 2012, the Northern Territory Ombudsman recorded 201 complaints alleging assault/excessive use of force by Northern Territory Police and 4 complaints alleging assault/excessive use of force by Prison Officers.

	2006-07	*2007-08*	*2008-09*	*2009-10*	*2010-11*	*2011-12*
Complaints alleging assault / excessive use of force by NT Police	26	36	35	49	42	13
Complaints alleging assault / excessive use of force by NT Corrections Prison Officers	1	1	0	0	2	0

231. Between 1 July 2006 and 30 June 2011, the WA Corruption and Crime Commission recorded 2,398 complaints alleging assault or the excessive use of force by WA Police and other public authorities:

	2006-07	*2007-08*	*2008-09*	*2009-10*	*2010-11*
Complaints of assault or excessive use of force by WA Police and other public authorities	375	457	488	560	518

Reply to the issues raised in paragraph 37 of the list of issues

232. The Government funds a number of initiatives to support Aboriginal legal assistance through its Indigenous Justice Program and Indigenous Legal Assistance and Policy Reform Program.

233. The Government funds eight Aboriginal and Torres Strait Islander Legal Services (ATSILS) to provide legal assistance services to Indigenous Australians. With the exception of a contribution from the Australian Capital Territory Government, the Commonwealth is the sole funder of Indigenous legal assistance.

234. ATSILs are funded to provide high quality, culturally sensitive, and appropriate and accessible legal assistance services for Indigenous Australians, to ensure that they can fully exercise their rights as Australian citizens. These services include advice, duty lawyers and case work in criminal, family and civil law. Priority clients are defined as those detained, or at risk of being detained, in custody, and legal assistance in criminal matters continues to be the area of highest demand.

235. The ATSILS deliver services from numerous permanent locations, as well as at court circuits, regional courts and outreach locations in metropolitan, regional and remote areas throughout all States and Territories. Services are also delivered at Indigenous specific courts including Koori Courts, Nunga Courts and Aboriginal Courts.

236. There are significant differences between Indigenous legal assistance and mainstream legal aid funding. The major focus of Indigenous legal assistance services is state criminal law. Mainstream legal aid commissions are Commonwealth funded for Commonwealth matters only, and focus that effort on family law matters. This difference is attributable to the ways in which eligibility and priority clients are defined and the different funding arrangements between the Commonwealth, legal aid commissions and Indigenous legal assistance services. For Indigenous legal assistance, priority clients are those detained, or at risk of being detained, in custody. This means that the majority of Commonwealth funds (over 80%) are used to assist in State criminal law matters. The organisations also operate under different governance and organisational structures, geographical environments, and community expectations. For instance, the majority of legal aid commission outlets are in metropolitan and regional centres, whilst Indigenous legal assistance outlets are in regional, rural and remote centres.

237. The Australian Government and States and Territories fund legal assistance for matters arising under their laws and jurisdiction. The Australian Government also provides funding to legal aid for activities which are aimed at early intervention and prevention strategies, such as community legal education. This can relate to state and/or Commonwealth matters.

238. Funding through the Indigenous Justice Program meets the urgent challenge of the accelerating rate of Indigenous offending and incarceration, and supports the realisation of safer communities. The objective of the Program is to increase community safety for Indigenous Australians through funding projects that address Indigenous offending, victimisation and incarceration by targeting the underlying causes of Indigenous offending and recidivism.

239. Under the Closing the Gap in the Northern Territory initiative, the Commonwealth Government provided $80 million over 2009-12 for initiatives to support community safety in communities within the Northern Territory, including night patrol services. Night patrols are in a unique position to be able to enhance community safety through assisting people, especially women and children at risk of becoming the victims of harm. The services transport people to a safe place where their immediate needs can be addressed, and refer them to other services for ongoing assistance. Patrols can also reduce the number of people who come into unnecessary adverse contact with the criminal justice system by intervening early, in a culturally appropriate manner, in situations which have the potential to become violent or disruptive. Under the Stronger Futures in the Northern Territory strategy, the Government has made continued funding available to support night patrol services across 80 communities in the Northern Territory.

240. Most states and territories have established specialist Indigenous Courts which aim to make court processes more culturally appropriate and to engender greater trust between Indigenous communities and judicial officers.

241. A Memorandum of Understanding (MOU) between the Commonwealth and Northern Territory Governments provides for interpreter services to Indigenous Australians through the Northern Territory Aboriginal Interpreter Service (NTAIS). Funding supports free access to interpreters for Northern Territory law, justice and health agencies, and legal assistance service providers.

Article 15

Reply to the issues raised in paragraph 38 of the list of issues

242. The law of evidence in Australia is a mixture of statute, common law and rules of court. Federal courts apply the law found in the Evidence Act 1995 (Cth). In New South Wales, the Australian Capital Territory, Tasmania and Victoria, state courts exercising federal or state jurisdiction and some tribunals apply legislation which mirrors the Evidence Act. The Northern Territory has also passed legislation to the same effect, which commenced on 1 January 2013.

243. Section 138 of the Evidence Act provides a general guided discretion to exclude evidence from a legal proceeding where that evidence has been obtained improperly or illegally (in contravention of an Australian law) or in consequence of such an impropriety or illegality. The guided discretion requires the court to weigh up the desirability of admitting the evidence against the undesirability of admitting evidence obtained in the way it was obtained. To support this outcome, subsection 138 (3) (f) requires the court to take into account whether the impropriety or illegality was contrary to a right recognised by the ICCPR.

244. The Government is confident that where an allegation of torture is substantiated, the discretion in section 138 of the Evidence Act would operate to prevent evidence obtained by torture to be admitted.

245. Section 84 of the Evidence Act also deals with the exclusion of an "admission" influenced by violence and other conduct. It provides that where the court is satisfied that an admission was influenced by violent, oppressive, inhuman or degrading conduct, that evidence is inadmissible. If an admission is ruled inadmissible by a court under section 84, it would not be necessary to consider arguments under other sections of the Evidence Act relating to the admissibility of that admission.

Article 16

Reply to the issues raised in paragraph 39 of the list of issues

246. The Government considers immigration detention to be an essential component of strong border control. Mandatory detention, along with strong border security measures, ensures the orderly processing of migration to Australia. In line with the Government's approach to immigration detention, mandatory detention is applicable to the following groups of people:

- all unauthorised arrivals for the management of health, identity and security risks;
- unlawful non-citizens who present unacceptable risks to the community; and
- unlawful non-citizens who repeatedly refuse to comply with their visa conditions.

247. The decision to detain is based on an assessment of risk. In the case of a person who arrived in Australia lawfully and subsequently became unlawful, the decision to detain is based on an assessment of the risk that person may present to the Australian community, or to the integrity of the migration program through repeated refusal to comply with their visa conditions. In the case of irregular maritime arrivals who have not given the Government an opportunity to assess any health, identity or security risks to the community they may present, the Government has made the judgement that they will be detained for the purposes of assessing and managing those risks.

248. It remains the Government's position that indefinite or otherwise arbitrary immigration detention is not acceptable and the length and the conditions of the detention are subject to regular review by DIAC senior officers and the Commonwealth Ombudsman. The reviews consider the lawfulness and appropriateness of the person's detention, their detention arrangements, and other matters relevant to their ongoing detention and case resolution.

249. In addition, a person in immigration detention can seek judicial review of the lawfulness of their detention. A person in immigration detention may generally also seek merits and/or judicial review of the visa-related decision that resulted in them remaining or becoming an unlawful non-citizen and being liable for detention, including a decision to refuse a bridging visa once they are detained.

250. To ensure people are treated humanely, decently and fairly, immigration detention is also subject to scrutiny from external agencies such as the Australian Human Rights Commission (AHRC), the Commonwealth Ombudsman, the United Nations High Commissioner for Refugees, and the Minister's Council on Asylum Seekers and Detention.

251. The Migration Amendment (Immigration Detention Reform) Bill 2009 was part of a package of reform that was introduced in the Senate on 25 June 2009. It was referred to the Senate Legal and Constitutional Affairs Committee, which reported on 20 August 2009. The Bill subsequently lapsed when Parliament was prorogued on 19 July 2010 and has not since been reintroduced and debated in Parliament.

252. Since November 2011, the Minister for Immigration and Citizenship has used his public interest powers under the Migration Act to allow asylum seekers who arrive by boat in Australia to be considered for community placement. Prioritisation for moving people into the community is based on time in detention, mental health and vulnerability issues and treatment requirements, family links within the community or other community support, and broader detention centre management issues. People will need to have completed initial checks including health, security and identity prior to being considered for grant of a bridging visa.

253. Holders of bridging visas, who arrived in Australia before 13 August 2012, have permission to work and access to public health services. Support services through existing government programs, such as the Asylum Seeker Assistance Scheme and the Community Assistance Support program, will be made available to eligible clients. On 21 November 2012 the Minister for Immigration and Citizenship made an announcement indicating that due to large numbers of irregular maritime arrivals on or after 13 August 2012, not everyone in this cohort would be transferred to Nauru or Manus Island. Accordingly, some of these people will be processed in Australia and, in cases where appropriate security, health and identity checks have been satisfactorily completed, they will be considered for placement in the community on Bridging visas.

Reply to the issues raised in paragraph 40 of the list of issues

254. The Government is committed to maintaining the excision architecture and has no plans to repeal Section 494AA of the Migration Act.

255. The Government is maintaining a system of initial processing on Christmas Island for Irregular Maritime Arrivals. This system is designed to ensure that the essential processes, such as entry procedures and health checks, are carried out before any person is transferred to the Australian mainland. All Irregular Maritime Arrivals on Christmas Island are treated fairly and humanely and are provided with appropriate services according to their need.

256. As noted in response to paragraph 39 of the list of issues, the Minister for Immigration and Citizenship announced on 25 November 2011 that the Minister would use their public interest powers under the Migration Act to allow asylum seekers who arrive by boat in Australia be considered for community placement on bridging visas.

257. Offshore entry persons are able to challenge the lawfulness of their detention in the High Court, Australia's highest court, pursuant to Australia's Constitution. Section 494AA of the Migration Act does not affect the jurisdiction of the High Court.

Reply to the issues raised in paragraph 41 of the list of issues

258. Continuing detention is not limited by a set timeframe, but is dependent upon factors such as management of health, identity and security risks and ongoing assessments of risks to the community or the integrity of Australia's migration programs. These assessments are completed as expeditiously as possible. Where concern exists that a person presents an unacceptable risk to the community, they will remain in detention until their removal can be effected or that concern is allayed and they are eligible for grant of a visa.

259. The community detention program (formally known as the Residence Determination program) was established in June 2005 following changes to the Migration Act. The Government announced an expansion of the community detention program in October 2010, enabling significant numbers of unaccompanied minors and vulnerable family groups to be relocated from immigration detention facilities to community-based accommodation.

260. The length and conditions of detention, including the appropriateness of both the accommodation and the services provided, is subject to regular reviews by DIAC senior officers and the Commonwealth Ombudsman. The reviews consider the lawfulness and appropriateness of the person's detention, their detention arrangements, and other matters relevant to their ongoing detention and case resolution.

261. Scrutiny from a number of external parties helps ensure that people in immigration detention are treated humanely, decently and fairly. These parties include Parliamentary Committees, the Minister's Council on Asylum Seekers and Detention, the Commonwealth Ombudsman, the Australian Human Rights Commission, the Detention Health Advisory Group, and the United Nations High Commissioner for Refugees.

262. DIAC facilitates visits by federal parliamentarians and parliamentary committees who regularly visit immigration detention facilities and report on conditions in these facilities. The Commonwealth Ombudsman has a statutory right to enter immigration detention facilities to investigate complaints and can undertake their own inquiries into aspects of immigration detention. While the AHRC has no express rights or powers of entry to immigration detention facilities, DIAC facilitates visits wherever possible.

Health care

263. All people in immigration detention have access to appropriate health care commensurate with the level of care available to the broader Australian community and consistent with the duty of care owed to people in immigration detention. All people entering immigration detention receive a Health Induction Assessment within 72 hours of arrival to identify conditions that will require attention and in order to formulate a

personalised health care plan. The Health Induction Assessment includes the collection of personal and medical history, a physical examination and formalised mental health screening and assessment.

264. For people in facility-based detention, most primary health services are available onsite with referral to external health providers in the community as clinically required. For people in community detention and some immigration residential housing, health care services are provided by community-based health providers.

265. People transferred to a Regional Processing Centre on Nauru or Manus Island receive health care from onsite general practitioners, nurses, paramedics, counsellors and psychologists employed by the contracted Health Services Provider. There are also visiting psychiatrists and other specialists, as required.

Mental health

266. All people in immigration detention are provided with access to a range of health care services, including mental health support. DIAC has implemented policies and programs to minimise factors that contribute to the deterioration of the mental health of those in detention and to assist those in need, including prompt referral to appropriate treatment. Additionally, all personnel who work with people in detention are trained to recognise and respond to the warning signs and risk factors of self-harm and the deterioration of mental health.

267. The Government has introduced three mental health policies to identify existing mental health issues, provide psychological support to people in immigration detention, and minimise self-harm risk. The policies are operational across the entire immigration detention network. These policies include the identification and support of people in immigration detention who are survivors of torture and trauma; a Psychological Support Program for the prevention of self-harm in immigration detention; and mental health screening for people in immigration detention. These policies were developed in consultation with DIAC's health advisory group and with reference to the Government's National Mental Health Policy and standards recommended by the Royal Australian College of General Practitioners.

268. A mental health policy for people transferred to Regional Processing Centres is being developed. In the meantime, such persons are being offered professional mental health support in line with services provided to people in immigration detention in Australia.

Detention conditions and overcrowding

269. Flexible facility-based accommodation options available for use on Christmas Island help manage this process, including housing families and unaccompanied minors. Where appropriate, and for operational reasons, irregular maritime arrival clients and crew can and have been transferred to the Australian mainland while their processing continues. Detention accommodation is available in both metropolitan and regional areas. Sites are utilised as operationally appropriate and placement of clients is dependent on the individual needs of each client, and an individual risk assessment. Families, unaccompanied minors and vulnerable people are transferred to the mainland at the earliest possible opportunity to facilitate placement into community-based arrangements.

270. The Government has established new detention accommodation on mainland Australia to increase capacity and better accommodate people at facilities in the detention network. Additional facilities have been established and are operational at Inverbrackie, South Australia and Wickham Point, Northern Territory. The new facility at Wickham Point opened in early December 2011 with an initial capacity for 500 beds. The final stages

at Wickham Point were completed in April 2012, providing a total capacity for 1500 beds. A facility in Pontville, Tasmania was temporarily operational from the latter half of 2011 to March 2012 whilst other facilities were established. The Minister for Immigration announced the reopening of this facility on 21 November 2012 and the first cohort of asylum seekers arrived in Pontville, Tasmania on 16 December 2012.

Reply to the issues raised in paragraph 42 of the list of issues

271. People in immigration detention in Australia are accommodated in a range of facilities and are placed in the form of accommodation most appropriate to their circumstances. The immigration detention network includes:

- Immigration Detention Centres, which are the highest security facilities in the detention network;
- Immigration Residential Housing, which provides a flexible arrangement to enable people in immigration detention to live in family-style accommodation;
- Immigration Transit Accommodation, which provides semi-independent living in hostel style accommodation for people who are a low security risk;
- Alternative Places of Detention, which are low security facilities used to meet the specific needs of detainees that cannot be catered for in other immigration detention facilities. These facilities can include hostels, housing, and hospitals for detainees requiring medical treatment; and
- Community detention.

272. The community detention program (also known as Residence Determination) was established in June 2005. In October 2010, the existing program was expanded for unaccompanied minors, families and other vulnerable adults. Community detention is a form of immigration detention that enables people in detention to reside and move about freely in the community without needing to be accompanied by an officer under the Migration Act.

273. Expanding the Australian Government's existing community detention program has enabled significant numbers of unaccompanied minors and vulnerable family groups to be relocated from immigration detention facilities to community-based accommodation.

274. DIAC takes a risk-based approach to the management of immigration clients, including ensuring that appropriate identity, health, and security risk assessments are undertaken prior to moving clients into the community. Under the Migration Act, before approving any client for community detention, the Minister for Immigration and Citizenship must be satisfied that it is in the public interest to do so.

275. Placements in community detention are voluntary. Living in community detention requires a certain level of independence and self-sufficiency, which means it is important that clients are fully informed about community detention and agree to being put forward for consideration for the program. All clients are informed of the conditions of their community detention arrangements upon entry into the program. Conditions include a mandatory requirement to report regularly to DIAC and/or their service provider, and reside at the address specified by the Minister. Conditions may also include supervision and curfew arrangements. These conditions are managed sensitively by Departmental case managers.

276. Clients in community detention arrangements continue to work with their case managers on the resolution of their status and are encouraged to keep an open mind about the range of possible outcomes, including return.

277. As noted in response to the issues raised in paragraph 39 of the list of issues, since November 2011, the Minister for Immigration and Citizenship has used their public interest powers under the Migration Act to allow asylum seekers who arrive by boat in Australia to be considered for community placement.

Reply to the issues raised in paragraph 43 of the list of issues

278. All unauthorised arrivals to Australia are subject to mandatory detention for the purposes of health, identity and security checking. Importantly, children are not held in immigration detention centres. Children who are unauthorised arrivals are initially accommodated in lower security alternative places of detention within the immigration detention network (such as Immigration Residential Housing and Immigration Transit Accommodation). Where immigration detention occurs, the priority is that children and, where possible, their families, will be promptly moved into community detention, subject to the completion of any checks which may be necessary.

279. As noted above, children and families are a priority set by the Australian Government for community detention. In October 2010, the Government announced it would expand its existing community detention program and began moving significant numbers of unaccompanied minors and vulnerable family groups out of immigration detention facilities into community-based accommodation.

280. Since the program expanded in October 2010 and as at 10 December 2012, under the expanded Community Detention program, the Minister for Immigration and Citizenship had approved 5,712 clients for community detention. Of these, 1,722 people (1,004 adults and 718 children) are residing in the community under these arrangements and 3,310 have left the program after being granted protection visas.

281. While children are not detained in immigration detention centres, as at 10 December 2012 there were 1,185 IMA minors in low security alternate places of detention. These children are able to challenge the lawfulness of their detention in Australia's High Court. In addition, the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, are subject to regular review. These reviews are conducted every three months and alternate between reviews conducted by senior officers of DIAC and those conducted by the Commonwealth Ombudsman. The reviews consider the lawfulness and appropriateness of the person's detention, their detention arrangements and other matters relevant to their ongoing detention and case resolution.

282. The Immigration (Guardianship of Children) Act 1946 (IGOC Act) provides that the Minister for Immigration and Citizenship is the guardian of certain unaccompanied non-citizen minors who arrive in Australia without a parent or relative over 21 and with the intention of becoming a permanent resident.

283. Under the IGOC Act, the Minister can delegate their powers to any officer or authority of the Commonwealth or any State or Territory. Departmental officers are the delegated guardian of unaccompanied minors in immigration detention facilities and community detention. For unaccompanied humanitarian minors living in the community on visas, the Minister's guardianship has been delegated to State and Territory child welfare agencies, although not all agencies have accepted this delegation. Where a State or Territory child welfare agency has not accepted the delegation, a Departmental officer is the delegated guardian. The Minister can delegate their guardianship powers but cannot delegate the office of guardian itself.

284. The Minister owes a duty of care to all persons in detention, including children. In particular, the Minister has a duty of care for all unaccompanied minors for whom the Minister is the guardian and he is obligated to make decisions in the best interests of those children.

285. In addition to the role of delegated guardians, independent observers from Life Without Barriers are available at all times on Christmas Island, and other immigration detention facilities, to support unaccompanied minors and attend interviews and other appointments, as required.

Reply to the issues raised in paragraph 44 of the list of issues

286. Each Australian jurisdiction has its own guidelines regarding the use of force by law enforcement agencies. These guidelines are consistent with the Australia New Zealand Policing Advisory Agency national guidelines for incident management, conflict resolution, and use of force. In line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, these guidelines promote police use of the minimum amount of force appropriate for the safe and effective performance of police duties that is proportionate to the level of risk involved.

287. The AFP issues conducted energy weapons to members of its highly specialised tactical capabilities team as well as to frontline supervisors within its community policing arm in the Australian Capital Territory. The AFP intends expanding its use of conducted energy weapons to include frontline supervisors performing community policing roles at Australia's major airports.

288. The use of conducted energy weapons by members of the AFP is governed by the AFP Commissioner's Order on Operational Safety and closely monitored by the organisation's Operational Safety Committee and Professional Standards portfolio.

289. Conducted energy weapons must only be used by qualified appointees in accordance with AFP approved training and may only be used against another person where they believe on reasonable grounds that its use is necessary to:

- defend themselves or others from the imminent threat of physical injury in circumstances where protection cannot be afforded less forcefully;
- resolve an incident where a person is acting in a manner likely to injure themselves and the incident cannot be resolved less forcefully; or
- deter attacking animals.

290. The NSW Police Force must only use conducted energy weapons to protect human life and avoid violent confrontation. A conducted energy weapon must not be used on individuals who are already compliant or passive. Conducted energy weapon incidents are reviewed by senior management and may be investigated by Professional Standards Command.

291. In Victoria, conducted energy weapons have been trialled on a limited basis by Victorian Police since 2004. Conducted energy weapons can only be used as an alternative to firearms and where it is safe to use a conducted energy weapon. Each instance of conducted energy weapon use is subject to review by Managers and may be investigated by the Office of Police Integrity. A comprehensive Human Rights Impact assessment was conducted before the trial of the weapons commenced, and all associated personnel receive appropriate human rights training including their obligations under the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

292. In 2010, Western Australia Police implemented a new use of force reporting and monitoring regime and all Use of Force Reports are reviewed by the Corporate Use of Force Coordinator. Use of force by Western Australia Police is also subject to independent review by the Corruption and Crime Commission of Western Australia.

293. In South Australia, conducted energy weapons are only issued to trained police operational personnel as an additional tactical option in addition to others carried by police. Conducted energy weapons may only be used where a person is armed with a weapon and where the use is necessary to prevent serious injury or death to any person.

294. In Tasmania, the issuing of conducted energy weapons is limited to specialist officers who are members of the Special Operations Group, to be used only in response to specific incidents.

295. In the Northern Territory, the threshold for conducted energy weapon use by Northern Territory Police requires the imminent risk of serious injury or harm. Use of conducted energy weapons in the NT is monitored by the Taser Review Committee and by review of use of force case note entries.

296. Jurisdictions are also considering options to improve the consistency in policy for the deployment of less than lethal use of force options like conducted energy weapons by police.

Reply to the issues raised in paragraph 45 of the list of issues

297. Commonwealth criminal law sets the age of criminal responsibility at 10 years.

298. Under Commonwealth criminal law, there is a presumption that a child aged between 10 and 14 years of age is incapable of wrong. It is for the prosecution to prove as a question of fact that the child knew that his or her conduct was a wrong act of some seriousness.

299. Australia uses a number of strategies to reduce the number of juveniles in detention. Australian governments through their police ministers have developed a National Youth Policing Model. The Model contains six strategies to reduce, prevent and respond to youth violence and anti-social behaviour. The Model also supports and enhances effective programs already in place. Under the Model, jurisdictions have the flexibility to adapt responses to youth policing issues to suit local environments. The Model's target age (young Australians aged 12 to 24) addresses a number of problem areas for juveniles and young adults, such as alcohol related violence and risky driving behaviour. The Model also advocates police participation in prevention and diversion strategies such as education and awareness programs, and through collaboration with the broader community and other sectors.

300. In Australia, responsibility for juvenile justice lies with the States and Territories, and involves both juvenile justice agencies and other justice agencies such as the police and the courts. An important feature of the juvenile justice system in Australia is diversion, and police may divert young people from further involvement with the juvenile justice system through the use of warnings, informal and formal cautions, and other actions. If the young person is not diverted, then the matter proceeds to court. While awaiting their initial court appearance, the young person may be unsupervised in the community, detained by police, or supervised by the juvenile justice agency either in the community or in detention.

301. Following the initial court appearance, the court will either remand the young person in custody until the next court appearance or release them into the community, either unsupervised or under the supervision of the juvenile justice agency. Once the trial has concluded and if the court has found the young person guilty, they may be sentenced to a period of detention or community-based supervision (such as probation, community service order or suspended detention), or be given an unsupervised order such as a fine or a good behaviour bond. Young people sentenced to a period of detention may also be released on parole or supervised release before the end of their sentence.

302. Thus, there are a number of different legal arrangements or orders that can apply while a young person is awaiting the initial court appearance, awaiting the court hearing or outcome, or completing a sentence. Some of these orders do not require the young person to be supervised, some require the young person to be supervised by the relevant juvenile justice agency, while others require supervision by another agency such as police.

303. On 24 November 2011, the Government tabled its response to a federal Parliamentary Committee report on Indigenous youth in the criminal justice system, "Doing Time: Time for Doing". In responding to the report the Australian Government accepted (in whole or in principle) the vast majority of the Report's recommendations. The Government's response sets out where action has already been taken against specific recommendations and provides an indication of how the Government will pursue others. For example, the Government has committed to work with State and Territory governments with the aim of reducing the incidence of young people being held on remand. In particular, the Government proposes that jurisdictions seek to understand and reduce the factors leading young people to being placed on remand including any unintended consequences of legislation, the appropriateness of bail conditions, the role of police and community services agencies in bail and remand outcomes, and increasing the availability of appropriate accommodation options for youth who are granted bail.

304. Australia views imprisonment as a sentence of last resort that must be appropriate in all the circumstances. Courts have a range of options other than imprisonment when sentencing offenders, including home detention orders, community service orders, intensive corrections orders, suspended sentences, and release subject to a good behaviour bond. Cautioning, conferencing and other diversionary programs are also available in appropriate circumstances. All States and Territories have established separate Children's Courts to deal with criminal matters involving juvenile offenders.

305. The Tasmanian Government is about to embark on a review of the Continuum of Care relating to Youth Offending. This review will not just be focused on Youth Justice Services; it will consider all of the primary, secondary and tertiary Services that operate across the broader Children and Youth Service System. The review will consider alternatives to secure detention, including bail and remand options and additional community based restorative, preventative and early intervention options.

306. Consistent with the Vienna Declaration and Programme of Action, Australia regularly reviews its position, with a view to withdrawing reservations where possible. Australia has also committed to regular review of all reservations it has entered under human rights treaties.

307. It is not always desirable to separate juveniles from other offenders in all circumstances, for example, where segregation might in effect entail solitary confinement or living in conditions less amenable than those of the general prison population. These conditions can be further exacerbated by the generally low population density of Australia's inhabited areas. As a matter of practice, where States and Territories do not have separate facilities for housing juvenile offenders, they are generally housed separately from the adult prison population within the facility.

308. Under Commonwealth criminal law, mandatory minimum custodial sentences apply to a very limited number of serious, aggravated people smuggling offences in the Migration Act 1958.

309. No mandatory penalties apply to persons found to be children under federal laws. No mandatory penalties apply to children under Northern Territory laws. Further information on mandatory sentencing in Western Australia is outlined in the reply to paragraph 30 of the list of issues.

II. Other Issues

Reply to the issues raised in paragraph 46 of the list of issues

310. One of the central principles of Australia's counter-terrorism strategy is to act within legitimate legal frameworks and to respect the rule of law. Australia's counter-terrorism legislation provides particular powers for Australia's law enforcement and security agencies to deal with the terrorist threat. These powers provide law enforcement and security agencies with tools that seek to prevent terrorist acts and protect the community from terrorism. The need for these powers is balanced by legislative safeguards to ensure the powers are used appropriately and in defined circumstances.

311. Australia's national security and counter-terrorism framework incorporates review mechanisms to ensure the laws remain necessary and effective. Australia has also recently implemented measures to provide greater accountability and transparency including:

- establishing an Independent National Security Legislation Monitor;
- amending the Inspector-General of Intelligence and Security Act 1986 to allow inquiries by the Inspector-General of Intelligence and Security to extend to Commonwealth agencies that are not members of the Australian Intelligence Community; and
- establishing the Parliamentary Joint Committee on Law Enforcement to oversee the Australian Federal Police and the Australian Crime Commission.

312. AFP recruit training addresses the obligations in Part IC of the Crimes Act 1914 (Cth). More comprehensive training on these matters is delivered to AFP counter-terrorism investigators by AFP Legal. The AFP's Learning and Development portfolio offers several training programs to AFP members working (or intending to work) in the AFP's Counter Terrorism portfolio, and those who provide operational support to the areas on an ongoing basis. The focus of these training programs is to ensure that:

- the AFP is able to meet legislative obligations in relation to conducting counter-terrorism investigations;
- AFP members operating in the counter terrorism environment are fully aware of their human rights obligations and duties;
- suspects are treated in a humane and dignified manner; and
- the AFP can effectively gather evidence and intelligence to prevent, disrupt or investigate terrorist activity.

313. Australia's legal framework has an important role in helping to prevent terrorism and bring to justice those who perpetrate terrorism. At the forefront of Australia's counter-terrorism legislative framework are the terrorism offences in the Commonwealth Criminal Code 1995. Thirty-five people have been prosecuted and 22 people convicted under these offences.

III. General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

Reply to the issues raised in paragraph 47 of the list of issues

314. Australia is proud of its historical role in the drafting and development of international human rights instruments. Government initiatives since 2007 demonstrate its commitment to engaging with the United Nations and affirm Australia's longstanding commitment to the international protection of human rights.

315. Australia became a party to the Convention on the Rights of Persons with Disabilities in July 2008, and to the Optional Protocol to the Convention on the Rights of Persons with Disabilities in September 2009.

316. The Australian Government announced its support for the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) on 3 April 2009. The Declaration sets out a number of important principles which aim to improve the way that Government and Indigenous peoples can work together in the common project of ending Indigenous disadvantage.

317. Australia acknowledges the principles of the Declaration as guiding standards to be pursued in a spirit of partnership and mutual respect. The principles of the Declaration, particularly those relating to participation, economic and social development and rights, are in line with the Australian Government's overall strategy to close the gap on disadvantage between Indigenous and non-Indigenous Australians. In 2007, the governments instituted a strategy to address, through the Council of Australian Governments, the disadvantage and poor life outcomes faced by too many Indigenous Australians. This effort is supported by an unprecedented investment of $5.2 billion in funding for employment, education, health services, community development and community safety. These are all areas that are given special attention by the Declaration. In May 2009, Australia signed the Optional Protocol to the Convention against Torture and is working towards its ratification.

318. In April 2010, the Government announced Australia's Human Rights Framework which outlines a range of key measures to further protect and promote human rights in Australia. These measures include a comprehensive suite of education initiatives to promote a greater understanding of human rights across the community; establishing a new Parliamentary Joint Committee on Human Rights to provide greater scrutiny of legislation for compliance with our international human rights obligations; requiring that each new Bill introduced into Parliament is accompanied by a statement of compatibility with Australia's international human rights obligations; combining federal anti-discrimination laws into a single Act to remove unnecessary regulatory overlap and make the system more user-friendly; and an annual NGO Human Rights Forum to enable comprehensive engagement with non-governmental organisations on human rights matters.

319. Furthermore, as part of the Framework, the Government is developing a new National Human Rights Action Plan. While Australia has developed Action Plans before, the new Action Plan has been informed by the development of a Baseline Study which provides a thorough assessment of key human rights issues for Australia and existing measures to address them. The final Baseline Study and a draft Action Plan were launched on 9 December 2011. Once the Action Plan is finalised in 2012, it will be tabled in Australia's Parliament and lodged with the United Nations.

320. Relevant measures contained in the draft Action Plan that will be undertaken to improve human rights under the Convention include investigating ways that the justice system can better address mental illness and cognitive disability; research into rates of

imprisonment, with a focus on vulnerable groups and alternative sentencing options; and work with the States and Territories on the regime governing the sterilisation of women and girls with disability.

321. It is recognised at all levels of government that a more effective response is required for people with disability involved with the criminal justice system. This includes the National Disability Justice Strategy – Priority Area Two which has a focus on rights protection, justice and legislation. South Australia is contributing to work undertaken by the Disability Policy Research Working Group regarding people with cognitive disability in the criminal justice system.

Reply to the issues raised in paragraph 48 of the list of issues

322. Australia is always willing to engage positively with the international community in implementing its human rights obligations. In August 2008, the Government issued a standing invitation to Special Procedures of the United Nations Human Rights Council to visit Australia. Since issuing the standing invitation, Australia has received visits from the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People (August 2009) and the Special Rapporteur on the Right to Health (November-December 2009).

323. The Government has strengthened the role of the Australian Human Rights Commission, Australia's national human rights institution, by providing $6.6 million over four years in new funding. The Government has also restored the role of the stand-alone Race Discrimination Commissioner and created a stand-alone Age Discrimination Commissioner position in the Commission. Furthermore, on 29 April 2012, the Government announced the creation of a National Children's Commissioner within the Australian Human Rights Commission who will focus on promoting the rights, wellbeing and development of children and young people in Australia.

324. The People of Australia – Australia's Multicultural Policy, was launched on 16 February 2011 and reaffirms the importance of a culturally diverse and socially cohesive nation. The policy provides for the development and implementation of a National Anti-Racism Strategy. Funding of $1.7 million over four years (2012-15) has been allocated for the Strategy to combat racism by educating the Australian community to identify racial prejudice where it occurs. Additional information is at http://itstopswithme.humanrights.gov.au/.

Reply to the issues raised in paragraph 49 of the list of issues

325. The Government abolished the death penalty in Australia in 1973, including in the Territories. All States abolished the death penalty by 1985. In March 2010, legislation was passed by the Commonwealth Parliament to ensure the death penalty cannot be reintroduced anywhere in Australia.